

BRB No. 98-0492

OPAL EVERETT)	
(Widow of ROBERT L. EVERETT))	
)	
Claimant-Petitioner)	DATE ISSUED: <u>Dec. 16, 1998</u>
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fee of Jeana F. Jackson, District Director, United States Department of Labor.

Robin Reid Boswell (Maples and Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Compensation Order Award of Attorney's Fee (Case No. 6-155974) of District Director Jeana F. Jackson rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. See, *e.g.*, *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Decedent filed a claim for benefits under the Act on October 6, 1993, based upon his alleged work-related hearing impairment. Employer later accepted liability for the claim and voluntarily paid benefits on October 24, 1994, prior to any formal adjudication of the claim. Thereafter, claimant's counsel submitted a petition for an attorney's fee for work performed before the district director, requesting a fee totaling \$1,471, representing 9.375 hours at \$150 per hour, plus expenses of \$64.75. In her Compensation Order Award of Attorney's Fee dated December 9, 1997, the district director awarded claimant's counsel a fee totaling \$805, for 7.5 hours at \$100 per hour, and \$55 in expenses, of which employer was ordered to pay \$355, with the remainder of the fee, \$450, payable by claimant as a lien upon the compensation award.¹ Relevant to the instant appeal, the district director denied any time for attorney services rendered after the date that employer paid benefits, October 24, 1994, based on her finding that no further benefits were derived from services performed subsequent to that date.

On appeal, claimant's counsel challenges the district director's denial of an attorney's fee for services rendered after October 24, 1994. Employer responds, urging affirmance of the fee award.

Claimant's counsel asserts that, contrary to the district director's determination, all entries on the fee petition after October 24, 1994, totaling 1.875 hours, reflect legal work that was required in order to ensure that this claim was properly wrapped up and, as such, these fees are compensable as reasonable and necessary "wind up" services associated with the claim. Specifically, counsel argues that claimant did not receive reimbursement for a covered payment to one medical provider until February 8, 1995, and therefore, any time spent by counsel on legal work up to that date in order to obtain these medical benefits is compensable. Additionally, counsel argues that entries subsequent to October 24, 1994, involving the forwarding of the compensation payment to claimant, explanation to claimant that employer had not provided the wage records necessary to determine whether the proper amount of benefits had been paid, and counsel's subsequent efforts to procure the requisite records and ensure that the proper amount of compensation

¹The district director had previously issued a Compensation Order Award of Attorney's Fee on May 15, 1997, in which she approved 7.87 hours at \$100, plus \$55 in expenses, for a total fee in the amount of \$842. Claimant thereafter filed a motion for reconsideration on the ground that the district director erred in denying all fees requested after October 24, 1994, the date on which employer voluntarily paid benefits. As a result of claimant's motion, the district director issued her Compensation Order Award of Attorney's Fee dated December 9, 1997, declining to address claimant's contention on reconsideration.

had been paid, are all reasonable and necessary to claimant's claim and therefore are compensable as attorney's fees.

Employer may be held liable for reasonable "wind-up" services after it has agreed to pay benefits. See *Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995). In *Nelson*, the Board specifically held that an administrative law judge has the jurisdiction to consider the compensability of services rendered after employer has paid or tendered compensation, such as reading the decision and calculating the amount of benefits due, services similar in nature to those requested by claimant's counsel and summarily rejected by the district director in the instant case. *Id.* at 95. The district director herein rejected all time requested for attorney services performed after October 24, 1994, on the ground that no further benefits were derived subsequent to that date, without first considering the necessity and reasonableness of the time requested as it may relate to any services performed to "wind-up" this case. We therefore vacate the district director's denial of an attorney's fee for services performed after October 24, 1994. On remand, the district director must provide an adequate discussion of the time requested and services rendered by claimant's counsel after October 24, 1994, and assess the necessity and reasonableness of the work involved, in order to discern whether these entries represent "wind-up" services for which counsel may be entitled to a fee, payable by employer. *Id.*

Accordingly, the district director's denial of all attorney's fees after October 24, 1994, is vacated, and the case is remanded to the district director for further consideration consistent with this opinion. In all other respects, the district director's fee award is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting

Administrative Appeals Judge