

DEAN BELLMER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
JONES OREGON STEVEDORING COMPANY)	DATE ISSUED: _____
)	
and)	
)	
STEVEDORING SERVICES OF AMERICA)	
)	
and)	
)	
EAGLE PACIFIC INSURANCE COMPANY)	
)	
Employers/Carrier- Respondents)	ORDER GRANTING MOTION TO REMAND

Claimant's counsel filed an appeal of the administrative law judge's Order Denying Claimant's Motion for Interest on Fee Award or, In the Alternative, Increased Hourly Rate and his Order Denying Claimant's Motion for Reconsideration, contending he is entitled to interest on his attorney's fee award as compensation for the substantial delay in payment. Subsequently, counsel filed a Motion to Remand the case to the administrative law judge, stating that he and employer have agreed that the administrative law judge should grant counsel a fee based on a higher hourly rate. As a result, claimant's counsel requests that the Board dismiss his appeal without prejudice and with the right of reinstatement should the administrative law judge decline to accept the parties' hourly rate stipulation. Employer has not responded.

A review of the administrative law judge's decision reveals that he denied counsel's request to enhance the fee award because he found the request to be filed in an untimely manner and because he found no law to permit enhancement of a fee award after it has become final, *i.e.*, he declined to address the issue because he determined he lacked subject matter jurisdiction. Order at 2; Order Denying

Recon. We grant the motion to remand, and we hold that the administrative law judge has jurisdiction to consider a request for an enhancement of an attorney's fee in the circumstances presented here.

In this case, the administrative law judge awarded claimant's counsel a fee in November 1993. The fee award was not appealed; however, the decision on the merits was appealed to both the Board and then the United States Court of Appeals for the Ninth Circuit. In March 1997, while the appeal was pending before the court, employer paid the awarded attorney's fee. In June 1997, counsel filed the motion for interest or a higher hourly rate, which the administrative law judge denied in October 1997. The Ninth Circuit issued its decision in December 1997, and, at that time, counsel's fee award became enforceable. *Wells v. International Great Lakes Shipping Co.*, 693 F.2d 663, 15 BRBS 47 (CRT) (7th Cir. 1982).

Thirty days after an attorney's fee is awarded, it becomes "final" in the sense that it can no longer be appealed. 33 U.S.C. §921(a); 20 C.F.R. §702.350. However, as it is not enforceable until all appeals are exhausted, the fee award is not "final" for purposes of payment until that time. Moreover, due to the uncertain length of the appellate process, counsel cannot know how long payment of his fee may be delayed, and it is only within a reasonable time after the fee becomes enforceable that counsel would know whether any delay warrants an enhancement request. Given these facts, we conclude that requests for fee enhancement should be treated as supplemental fee petitions and not as requests to re-open fee awards which have become final. In this way, the body awarding the fee can ensure that full effect is given to the case law allowing enhancement of a fee to account for the delay in payment. *Missouri v. Jenkins*, 491 U.S. 274 (1989); *Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995).

Once a timely request for an enhanced fee is made, the administrative body which awarded the fee must determine whether the delay in payment warrants awarding an enhancement. See *Nelson*, 29 BRBS at 90. In this case, counsel made his request to the administrative law judge shortly after employer paid the fee but before the fee award became enforceable as a result of the completion of the appellate process. Thus, he made the request in a timely manner, and his request for an increased hourly rate must be considered by the administrative law judge in light of the facts of this case.¹

¹Although we agree with counsel that the administrative law judge incorrectly determined that he does not have subject matter jurisdiction to address this fee enhancement issue, we nevertheless disagree with his argument that he is entitled to interest on the attorney's fee, as such an award would be contrary to applicable law. *Anderson v. Director, OWCP*, 91 F.3d 1322, 30 BRBS 67 (CRT) (9th Cir.

1996); *Hunt v. Director, OWCP*, 999 F.2d 419, 27 BRBS 84 (CRT) (9th Cir. 1993); *Hobbs v. Director, OWCP*, 820 F.2d 1528 (9th Cir. 1987); *Boland Marine & Manufacturing Co. v. Rihner*, 41 F.3d 997, 29 BRBS 43 (CRT) (5th Cir. 1995); *Greenhouse v. Ingalls Shipbuilding, Inc.*, 31 BRBS 41 (1997).

Accordingly, after considering counsel's motions and the administrative law judge's decisions, we hereby grant the motions to dismiss the appeal and to remand the case to the administrative law judge for further consideration of the request for an increased hourly rate. 20 C.F.R. §§802.219, 802.405.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge