

LARRY J. TATHAM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BENDER SHIPBUILDING AND	)	DATE ISSUED: <u>APR 29, 2005</u>
REPAIR COMPANY	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

D.A. Bass-Frazier (Huey & Leon), Mobile, Alabama, for claimant.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (2003-LHC-0769) of Administrative Law Judge Richard D. Mills 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 will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sustained an injury to his head, wrist and hand while working for employer. The administrative law judge awarded claimant disability and medical benefits, and claimant's counsel filed a petition for an attorney's fee. Counsel requested a fee for 27.725 hours at \$200 per hour, plus \$1,121.80 in expenses, for a total of \$6,666.80. Employer objected to the number of hours requested and the hourly rate, arguing that claimant was only partially successful and that the hourly rate was excessive for the geographic area.

The administrative law judge considered employer's objections and agreed that the hourly rate should be \$175. He rejected employer's remaining contentions and declined to reduce the number of hours, finding that claimant was fully successful in obtaining additional benefits. Supp. Decision and Order at 2-4. Therefore, he awarded claimant's counsel a fee of \$5,973.68. Claimant appeals the reduction of the hourly rate. Employer has not responded to this appeal.

Claimant contends the administrative law judge erred in arbitrarily accepting employer's unsupported statements that \$200 per hour was excessive for work in the Gulf Coast area and that \$175 per hour was more reasonable. Additionally, claimant argues that the administrative law judge did not provide sufficient explanation for reducing the hourly rate from \$200 to \$175. We reject claimant's arguments. It is the administrative law judge's responsibility to review the fee petition and determine whether the fee requested is "reasonably commensurate with the necessary work done[, taking] into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded. . . ." 20 C.F.R. §702.132(a); *see generally National Steel & Shipbuilding Co. v. U.S. Dep't of Labor*, 606 F.2d 875, 11 BRBS 68 (9<sup>th</sup> Cir. 1979). The administrative law judge is not bound by the hourly rate requested by counsel, suggested by employer or awarded in other cases. Rather, the administrative law judge is in the unique position of evaluating the effectiveness of counsel, the nature of the activities performed, the usual billing rate in the particular geographic area, and the complexity of the issues in setting an appropriate hourly rate. *See generally Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3<sup>d</sup> Cir. 2001); 20 C.F.R. §702.132. In this case, the administrative law judge determined that the work performed by counsel warranted an hourly rate of \$175 in the Gulf Coast area. He stated that claimant's counsel's brief, written in response to employer's objections, did not persuade him otherwise. As the administrative law judge considered claimant's contentions, as well as the geographic location, it cannot be said that he abused his discretion in reducing the hourly rate. *See generally Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10<sup>th</sup> Cir. 1997); *Finnegan v. Director, OWCP*, 69 F.3d 1039, 29 BRBS 121(CRT) (9<sup>th</sup> Cir. 1995).

Accordingly, the administrative law judge's Supplemental Decision and Order is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge