

TERRY W. HUDSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
COASTAL PRODUCTION SERVICES, INCORPORATED/FOREST OIL CORPORATION	)	DATE ISSUED: 04/27/2007
	)	
and	)	
	)	
ACE AMERICAN INSURANCE COMPANY	)	
	)	
Employer/Carrier- Petitioners	)	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.

Arthur J. Brewster, Metairie, Louisiana, for claimant.

Christopher L. Zaunbrecher and Stacy D. Saltzman (Briney & Foret), Lafayette, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (2004-LHC-00492) 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. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant was injured on a fixed oil and gas production platform located in the Saturday Island Field in Plaquemines Parish, Louisiana, on Barataria Bay, and sought benefits under the Act. The administrative law judge found that claimant was a “maritime employee” who was injured on a covered situs, 33 U.S.C. §§902(3), 903(a). Decision and Order at 12. Employer appealed the administrative law judge’s decision, and the Board affirmed the administrative law judge’s finding that claimant is covered under the Act. *Hudson v. Coastal Production Services, Inc.*, 40 BRBS 19 (2006).

Subsequent to the issuance of the administrative law judge’s decision awarding benefits, claimant’s counsel submitted to the administrative law judge an attorney’s fee petition requesting \$21,780.01, representing 84.625 hours of legal services at the hourly rate of \$235 and 1.575 of paralegal services at the hourly rate of \$75, and \$5,744.87 in costs. Counsel submitted a supplemental fee petition on June 24, 2005 for an additional \$1,775. The administrative law judge reduced the hourly rate to \$225, disallowed the services performed prior to the transfer of the case to the Office of Administrative Law Judges, and found that the remaining services and expenses were reasonable and necessary to the proceedings before him. Thus, the administrative law judge awarded claimant’s counsel a fee in the amount of \$16,852.50, representing 74.9 hours of legal services at the hourly rate of \$225, plus costs of \$16,852.50, payable by employer.

On appeal, employer contends that as the administrative law judge erred in finding that claimant is entitled to benefits under the Act, he erred in awarding claimant’s counsel an attorney’s fee to be paid by employer. Claimant did not respond to this appeal, but has filed a fee petition for work performed before the Board in the prior appeal, BRB No. 05-0779. Claimant requests a fee in the amount of \$2,760.75, representing 12.27 hours of legal services at the hourly rate of \$225. Employer has filed no objections to this fee petition.

Initially, we reject employer’s contentions regarding claimant’s entitlement to benefits under the Act for the reasons stated in *Hudson*, 40 BRBS at 19. *See generally Kirkpatrick v. B.B.I., Inc.*, 39 BRBS 69 (2005). Thus, as employer has raised no other contentions regarding the attorney’s fee award, we affirm the administrative law judge’s finding that claimant’s counsel is entitled to an attorney fee to be paid by employer as counsel successfully established claimant’s entitlement to benefits under the Act.

With regard to the fee petition for work performed before the Board in the prior appeal, we find the hours of services requested reasonably commensurate with the necessary work performed and with the complexity of the case, the quality of the representation, and the amount of benefits awarded. 20 C.F.R. §802.203(e). We award a fee for 12.27 hours of attorney services at the hourly rate of \$225 per hour as this rate is reasonable for the geographic area where the claim arose. 20 C.F.R. §802.203(d)(4). We, therefore, award claimant’s counsel an attorney’s fee of \$2,760.75, for work

performed before the Board in BRB No. 05-0779, to be paid directly to claimant's counsel by employer.<sup>1</sup> 33 U.S.C. §928.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is affirmed. Moreover, claimant's counsel is awarded a fee in the amount of \$2,760.75 for work performed before the Board in BRB No. 05-0779, to be paid directly to claimant's counsel by employer.

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

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<sup>1</sup> We note that the Board's decision in *Hudson*, 40 BRBS at 19, has been appealed to the United States Court of Appeals for the Fifth Circuit pursuant to Section 21(c) of the Act, 33 U.S.C. §921(c). Therefore, the fee award is contingent upon claimant's successfully defending the award of benefits on appeal.