

BRB No. 06-0690

DEBBIE I. ROBINS)
)
 Claimant-Petitioner)
)
 v.)
)
 MATSON TERMINALS, INCORPORATED) DATE ISSUED: 04/30/2007
)
 Self-Insured)
 Employer-Respondent)
) DECISION and ORDER

Appeal of the Supplemental Decision and Order – Partial Approval of Attorney Fee Petition of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Joshua T. Gillelan II (Longshore Claimants’ National Law Center), Washington, D.C., and Jay L. Friedheim (Admiralty Advocates), Honolulu, Hawaii, for claimant.

John R. Lacy and Randolph L.M. Baldemor (Goodsill Anderson Quinn & Stifel, LLP), Honolulu, Hawaii, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Supplemental Decision and Order – Partial Approval of Attorney Fee Petition (2003-LHC-0550) of Administrative Law Judge Richard T. Stansell-Gamm 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, a container freight station warehouseman, sustained an injury to her head and neck on December 12, 2001. Employer paid claimant medical benefits and compensation for various periods of total disability from the date of injury until August 4, 2002, when claimant returned to her usual job duties. Thereafter, claimant sought additional compensation.¹ In his Decision and Order – Partial Award of Temporary Total Disability Compensation Denial of Medical Treatment Reimbursement Claim, the administrative law judge awarded claimant compensation for the requested periods of temporary total disability but denied her claims for reimbursement of 37 additional sick/annual leave days and the treatment provided by Dr. Portner.

Claimant appealed the administrative law judge's decision. In its decision, the Board agreed with claimant that the administrative law judge used the wrong standard in denying reimbursement of the requested medical treatment and remanded the case for him to reconsider the issue. *Robins v. Matson Terminals*, BRB No. 04-0447 (Feb. 17, 2005)(unpub.). The Board declined to address any errors in the administrative law judge's finding regarding disability benefits, as claimant did not adequately brief the issue. *Id.*, slip op. at 2, n.2. On remand, the administrative law judge found claimant entitled to reimbursement for the requested medical treatment, which amounted to a recovery of less than \$300.

Claimant's counsel filed a fee petition with the administrative law judge, seeking a fee of \$21,812.50, representing 87.25 hours of work at \$250 per hour plus \$5,983.29 in expenses. Employer filed objections to the fee petition, arguing, *inter alia*, that the fee requested was out of proportion to claimant's award, which was approximately \$6,000.

In his Supplemental Decision and Order, the administrative law judge reduced the total hours requested to 83.55 and the hourly rate from \$250 to \$220 per hour based on the average rate in the geographic area and claimant's attorney's experience and position in the firm. This resulted in a fee for services of \$18,381 which the administrative law judge further reduced by 50 percent based on his calculation of the degree of success

¹ Claimant sought compensation for additional periods of total disability from September 3 through 10, 2002, and from September 23 through October 27, 2002, reimbursement for 37 additional sick/annual leave days, and reimbursement of the medical treatment provided by Dr. Porter on September 4, 2002.

claimant's attorney had gained for his client.² The administrative law judge awarded claimant's attorney a fee of \$9,190 plus costs of \$5,404.09.³

Claimant appeals, contending that the administrative law judge erred in his use of out-dated market rates to determine a reasonable hourly rate, and in reducing the fee to account for claimant's limited success. Employer responds, urging affirmance.

Claimant contends the administrative law judge erred in reducing the requested hourly rate to \$220 from \$250 based on his use of out-of-date reference material. In arriving at this determination, the administrative law judge used as a base reference the hourly rate figures for Hawaii law firms published in THE 2003 SURVEY OF LAW FIRM ECONOMICS (Altman Weil Publications, Inc. 2003). Claimant contends that use of the 2003 Survey fails to account for the delay in the payment for services rendered in 2003, due to the fact that the administrative law judge did not write his decision until June 2005 and that this decision was not served on the parties until May 2006.

While claimant's argument that use of the 2003 Survey to set counsel's hourly rate fails to account for the delay in the payment of the attorney's fee may have merit, *see generally Anderson v. Director, OWCP*, 91 F.3d 1322, 30 BRBS 67(CRT) (9th Cir. 1996), we nonetheless affirm the administrative law judge's fee award on the facts of this case, as it adequately reflects claimant's degree of success. In awarding counsel a fee of \$9,190, the administrative law judge noted that the fee requested was nearly triple that of claimant's recovery and that the legal issues were not particularly difficult. Supp. Decision and Order at 9. The administrative law judge also relied on claimant's limited recovery, in that she did not succeed on all the claims she asserted.

In this regard, we reject claimant's contention that the administrative law judge erred in awarding a reduced fee. The administrative law judge reduced the lodestar fee (83.55 hours x \$220/hr = \$18,381) by 50 percent. With regard to the amount of an attorney's fee pursuant to a fee-shifting scheme, the United States Supreme Court has held that an attorney's fee award should be for an amount that is reasonable in relation to the results obtained. *Hensley v. Eckerhart*, 461 U.S. 424, 435-436 (1983). The Court specifically stated that when a party "has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable

² The administrative law judge calculated that if claimant had been fully successful, she would have recovered \$11,515 but actually received \$6,250, 54 percent of the amount claimed. Supplemental Decision and Order at 9.

³ The administrative law judge reduced the requested expenses by \$579.20, which represented the cost of a duplicative transcript. Supplemental Decision and Order at 9.

hourly rate may be an excessive amount. This will be true even where the plaintiff's claims were interrelated, nonfrivolous, and raised in good faith." *Id.* at 436. The courts have recognized the broad discretion of the factfinder in assessing the amount of an attorney's fee pursuant to *Hensley* principles. *Id.*; see, e.g., *Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001); *General Dynamics Corp. v. Horrigan*, 848 F.2d 321, 21 BRBS 73(CRT) (1st Cir.), *cert. denied*, 488 U.S. 992 (1988).

The administrative law judge in this case specifically conducted an extensive review of counsel's requested fee in view of the *Hensley* dictates and awarded a reduced attorney's fee, discussing in detail the basis for such an adjustment. Supp. Decision and Order at 4-9. Notwithstanding the use of an outdated reference guide for the hourly rate, claimant has not established that the administrative law judge abused his discretion in declining to award a fee of three times the amount of claimant's recovery. Given that the award of benefits totaled \$6,000, we cannot conclude that the fee of \$9,190 is unreasonable. Consequently, as the administrative law judge's fee award is reasonable in view of the results obtained and claimant's limited success, we affirm the awarded fee. See, e.g., *Hill v. Director, OWCP*, 195 F.3d 790, 33 BRBS 184(CRT) (5th Cir. 1999), *aff'g Hill v. Avondale Industries, Inc.*, 32 BRBS 186 (1998), *cert. denied*, 530 U.S. 1213 (2000); *Fagan v. Ceres Gulf, Inc.*, 33 BRBS 91 (1999).

Accordingly, the administrative law judge's Supplemental Decision and Order – Partial Approval of Attorney Fee Petition is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge