

BRB No. 08-0358

P.T.)
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 Claimant-Petitioner)
)
 v.)
)
 NAVY PERSONNEL COMMAND/MWR) DATE ISSUED: 04/23/2009
)
 Self-Insured) ORDER on
 Employer-Respondent) RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board's Decision and Order in *P.T. v. Navy Personnel Command/MWR*, BRB No. 08-0358 (Sept. 19, 2008) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer has filed a response brief, urging rejection of claimant's motion.

Claimant appealed to the Board the administrative law judge's fee award of \$3,675, which represented 14.7 hours of attorney work at an hourly rate of \$250. Claimant contended that the administrative law judge erred by basing his hourly rate determination on the rates paid to longshore attorneys in the relevant geographic community rather than on rates derived from the *Laffey* matrix, which claimant's counsel submitted to the administrative law judge in support of his requested hourly rate.

In its decision, the Board rejected claimant's contentions of error and affirmed the \$250 hourly rate. *P.T.*, slip op. at 4. The Board stated that hourly rate determinations in comparable cases may properly be considered as probative evidence of the prevailing market rates in the relevant community. The Board also stated that the administrative law judge had rationally applied the regulatory criteria of 20 C.F.R. §702.132, and that claimant had failed to demonstrate either legal error or an abuse of discretion in the administrative law judge's reduction of claimant's counsel's requested hourly rate.

For the reasons stated in *Christensen v. Stevedoring Services of America*, 557 F.3d 1049 (9th Cir. 2009), and *Van Skike v. Director, OWCP*, 557 F.3d 1041 (9th Cir. 2009), we grant claimant's motion for reconsideration, as this case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit. We vacate the Board's affirmance of the fee award based on an hourly rate of \$250, and we remand the case for the administrative law judge to determine the applicable hourly rate pursuant to these

decisions. *See also H.S. v. Dep't of the Army*, __ BRBS __, BRB Nos. 08-0533, 08-0596 (April 10, 2009).

Accordingly, claimant's motion for reconsideration is granted.¹ 20 C.F.R. §802.409. The Board's affirmance of the administrative law judge's fee award based on an hourly rate of \$250 is vacated, and the case is remanded for further proceedings in accordance with this order.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

¹ As the panel has granted claimant's motion for reconsideration, claimant's motion for *en banc* reconsideration is denied. 20 C.F.R. §802.407(d).