

BRB Nos. 08-0696
and 08-0776

ESTATE OF R.S.)
(Widow of A.S.))
)
Claimant-Petitioner)
)
v.)
)
SERVICE EMPLOYEES) DATE ISSUED: 04/29/2009
INTERNATIONAL, INCORPORATED)
)
and)
)
INSURANCE COMPANY OF THE)
STATE OF PENNSYLVANIA)
)
Employer/Carrier-)
Respondents) DECISION and ORDER

Appeals of the Order on Attorney's Fees of Karen P. Staats, District Director and the Attorney Fee Order of Jennifer Gee, Administrative Law Judge, United States Department of Labor.

Charles Robinowitz, Portland, Oregon, for claimant.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order on Attorney's Fees (No. 02-139366) of District Director Karen P. Staats and the Attorney Fee Order (2007-LDA-0355) of Administrative Law Judge Jennifer Gee 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant is the estate of R.S., the now-deceased widow of A.S., the deceased employee, who was killed on December 21, 2004, in the course of his employment with employer in Iraq. The deceased employee's widow filed a claim seeking death benefits and funeral expenses under the Act. The administrative law judge approved the parties' stipulations regarding claimant's entitlement to benefits in a Decision and Order issued on March 19, 2008. Claimant's attorney subsequently filed fee petitions with both the district director¹ and the administrative law judge,² seeking fees for work performed before them.³

¹ For work performed before the district director, claimant's counsel requested a fee of \$7,702.50, representing 19.5 hours of attorney services at an hourly rate of \$375 and 3.25 hours of legal assistant services at an hourly rate of \$120. Employer responded, objecting to the \$375 hourly rate requested for attorney services. With his reply to employer's objections, claimant's attorney requested an additional fee of \$281.25 for .75 hour of attorney time.

² For work performed before the administrative law judge, claimant's counsel requested a fee of \$4,967.53, representing 12.75 hours of attorney services at an hourly rate of \$375, 1.5 hours of legal assistant services at an hourly rate of \$120, and \$6.28 in costs. Thereafter, claimant's attorney wrote to the administrative law judge, advising him that employer had not filed objections to the fee request and requesting an additional fee of \$93.75 for .25 hour spent by counsel reviewing the file. Employer subsequently submitted a response to the fee petition, challenging the requested hourly rate for attorney services. Claimant's attorney replied to employer's response, and requested an additional fee of \$281.25 for .75 hour spent by counsel preparing the reply.

³ With his fee petitions filed with both the district director and the administrative law judge, claimant's counsel submitted his resumé, a copy of the 2006 update of the Morones Survey, and a copy of the affidavit of William B. Crow, an attorney and expert on attorney fees, in support of his requested hourly rate for attorney services. Employer did not submit evidence in support of its position that \$200 to \$225 represented a reasonable hourly rate for claimant's counsel's services in this case.

In support of the requested \$120 hourly rate for legal assistant services, claimant's attorney stated that based on his survey of the legal assistant market rate in Portland, Oregon, conducted two years earlier, the market hourly rate for an experienced legal assistant in Portland ranges from \$115 to \$130. Claimant's attorney noted that the legal assistant who worked on this case has over 15 years of experience. Employer did not

In her Order on Attorney's Fees, the district director awarded claimant's attorney a fee of \$5,250.00, representing 20.25 hours of attorney services at an hourly rate of \$240 and 3.25 hours of legal assistant services at an hourly rate of \$120. In her Attorney Fee Order, the administrative law judge approved a fee of \$3,952.53, representing 13.75 hours of attorney services at an hourly rate of \$275, 1.5 hours of legal assistant services at an hourly rate of \$110, and \$6.28 in costs.

Claimant appeals the fee awards of both the district director, BRB No. 08-0776, and the administrative law judge, BRB No. 08-0696, contending that they erred in reducing his requested hourly rate for attorney services from \$375 to \$240 and \$275 per hour, respectively. Claimant further contends that the administrative law judge erred in reducing his requested hourly rate for legal assistant work from \$120 to \$110. Employer has not responded to claimant's appeals.

Claimant argues that the district director and the administrative law judge committed legal error by rejecting counsel's evidence of the "market" hourly rates of comparable attorneys in Portland, Oregon and relying instead on hourly rate determinations made by the Board, administrative law judges and district directors in other longshore cases.⁴ 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 vacate the hourly rate determinations for attorney services made by both the district director and the administrative law judge, and we remand the case for each of them to determine a reasonable hourly rate consistent with these decisions. *See also H.S. v. Dept. of Army/NAF*, ___ BRBS ___, BRB Nos. 08-0533, 08-0596 (Apr. 10, 2009). For the same reason, we also vacate the administrative law judge's decision to reduce the requested hourly rate for legal assistant services, which was based on the same rationale as that underlying her reduction in the hourly rate requested for attorney services. *Id.*

object to the requested legal assistant hourly rate in its responses to claimant's attorney's fee petitions.

⁴ The number of hours found compensable by the district director and administrative law judge is affirmed, as the findings in this regard are not challenged on appeal.

Accordingly, the fee awards of the district director and the administrative law judge are vacated, and the case is remanded for further proceedings consistent with this decision.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge