

JESSIE HERNANDEZ)
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 Claimant-Respondent)
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 v.)
)
 BLUDWORTH BOND SHIPYARD,) DATE ISSUED: 04/16/2010
 INCORPORATED)
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 Employer)
)
 and)
)
 TEXAS PROPERTY AND CASUALTY)
 INSURANCE GUARANTY ASSOCIATION)
)
 for)
)
 RELIANCE NATIONAL INDEMNITY)
 COMPANY)
)
 Carrier-Petitioner) DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney's Fees and Order Denying Employer/Carrier's Motion for Reconsideration of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Joel S. Mills (Pitts & Mills), Houston, Texas, for claimant.

Peter Thompson (Thompson & Reilly), Houston, Texas, for Texas Property and Casualty Insurance Guaranty Association.

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

PER CURIAM:

The Texas Property and Casualty Insurance Guaranty Association (hereinafter TPCIGA)¹ appeals the Supplemental Decision and Order Awarding Attorney's Fees and Order Denying Employer/Carrier's Motion for Reconsideration (2008-LHC-01245) of Administrative Law Judge C. Richard Avery 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). 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 suffered a work-related injury in 1998 and sought benefits under the Act. Employer contested claimant's entitlement to ongoing benefits and the case was referred to the Office of Administrative Law Judges for resolution. The administrative law judge awarded claimant disability and medical benefits. March 9, 2009, Decision and Order at 33-34.

Claimant's counsel filed a petition for an attorney's fee for work performed before the administrative law judge. He requested a fee of \$15,337.62, representing 29.25 hours of attorney work at an hourly rate of \$285; 28 hours of attorney work at an hourly rate of \$225; 3.75 hours of paralegal services at an hourly rate of \$95; and costs of \$345.12. TPCIGA filed objections, to which claimant's counsel replied.

The administrative law judge rejected TPCIGA's argument that it cannot be held liable for an attorney's fee because it is not a "carrier" under the Act. The administrative law judge found that TPCIGA "steps into the shoes" of the insolvent carrier and is potentially liable for post-insolvency attorney's fees. Supp. Dec. and Order at 2. As all fees in claimant's successful claim were incurred after the insolvency of Reliance, the administrative law judge held TPCIGA liable for claimant's attorney's fee. The

¹ TPCIGA, created under the Texas Property and Casualty Insurance Guaranty Act, was designed to protect claimants and policyholders from financial loss caused by the insolvency of an insurer. *See* Tex. Ins. Code Ann. Art. 21.28-C §§2(1)-(2), 5(8) (2001). The Act has since been amended and recodified in the Texas Insurance Guaranty Act (TIGA), Tex. Ins. Code Ann. Chapter 462. In October 2001, TPCIGA had declared employer's carrier, Reliance National Indemnity Company, "impaired," and subsequently Reliance became insolvent.

administrative law judge addressed TPCIGA's objections to the requested hours and hourly rate, and he awarded an attorney's fee of \$12,125, plus expenses of \$315.20.² The administrative law judge denied TPCIGA's motion for reconsideration. TPCIGA appeals, and claimant responds, urging affirmance of the administrative law judge's fee award.

TPCIGA first contends it cannot be held liable for claimant's attorney's fee pursuant to the Texas Insurance Guaranty Act. In *Zamora v. Friede Goldman Halter, Inc.*, 43 BRBS 160 (2009), the Board recently addressed the same contentions TPCIGA raises here. The Board held that as there is no conflict between the Longshore Act and the Texas insurance code, the Longshore Act does not preempt the Texas law. Thus, as both statutes apply, it is the application of the state statute that mandates whether and to what extent TPCIGA must satisfy Reliance's obligations under the Longshore Act. The Board also held that the law in effect at the time Reliance became impaired in October 2001 is the appropriate law to use in assessing TPCIGA's liability for an attorney's fee under the Act. The Board held that, under the 2001 Texas Insurance Code, TPCIGA may be held liable for legal services performed after Reliance was declared impaired in October 2001, but cannot be held liable for fees incurred prior thereto. *Id.* at 163-164. Therefore, for the reasons expressed in *Zamora*, we affirm the administrative law judge's finding that TPCIGA is liable for claimant's attorney's fee in this case, as all legal services were rendered after the date Reliance was declared impaired.

TPCIGA also contends that the fee awarded by the administrative law judge is excessive. It asserts that the hourly rate of \$95 awarded for paralegal services is too high and that the rate should be no more than \$75. TPCIGA also asserts that the hourly rate of \$200 awarded for Attorney Mills is excessive and should be no more than \$195. Additionally, TPCIGA argues that the administrative law judge should have further reduced entries for tasks it describes as routine or clerical, or for which excessive time was claimed.

We reject TPCIGA's arguments. First, TPCIGA cites only cases from 1996 and 2002 as support for a lower attorney hourly rate for claimant's second counsel, and thus has not shown that an hourly rate of \$200 for services rendered in 2008 is unreasonable. Moreover, TPCIGA does not provide any support for its position that the awarded paralegal rate is excessive. As to the various entries TPCIGA challenges, the

² This fee represents 28.375 hours of attorney services at an hourly rate of \$250; 23.375 hours of attorney services at an hourly rate of \$200; 3.75 hours of paralegal services at an hourly rate of \$95; and costs of \$315.20. The administrative law judge disallowed as office overhead counsel's claim for parking and FedEx delivery costs.

administrative law judge did not summarily dismiss TPCIGA's objections; he reviewed each objection and reduced some specific entries. The administrative law judge found that the remaining entries to which TPCIGA objected were not unnecessary or excessive, and thus awarded the requested fee. Supp. Decision and Order at 2. As the administrative law judge fully addressed the objections and as employer has not established an abuse of his discretion in this regard, we affirm the fee awarded by the administrative law judge. *See generally Zeigler Coal Co. v. Director, OWCP*, 326 F.3d 894 (7th Cir. 2003); *Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

Accordingly, we affirm the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge