



BRB No. 14-0343

GERMAN GUZMAN)	
)	
Claimant-Respondent)	
)	
v.)	
)	DATE ISSUED: <u>Apr. 10, 2015</u>
CERES GULF, INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney’s Fee of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Dennis L. Brown and Mike N. Cokins, Houston, Texas, for claimant.

Lawrence P. Postol (Seyfarth Shaw LLP), Washington, D.C., for self-insured employer.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney’s Fee (2013-LHC-00295) of Administrative Law Judge Lee J. Romero, Jr., 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 Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999).

Claimant sustained injuries to his neck and shoulder while in the course of his work for employer on May 27, 2009. In his Decision and Order dated January 7, 2014, the administrative law judge awarded claimant disability and medical benefits for

his work-related injuries.¹ Claimant's counsel filed a petition seeking an attorney's fee totaling \$38,438.50, representing 130.30 hours of attorney work at an hourly rate of \$295, 4 hours of paralegal work at an hourly rate of \$75, and \$13,344.13 in expenses, for work performed before the Office of Administrative Law Judges between March 2012 and January 2014 in this case. Employer filed objections, to which claimant's counsel replied. Claimant's counsel submitted a supplemental fee petition seeking an additional \$2,006 in attorney's fees, representing 6.8 hours of attorney work in defense of the initial fee petition.

In his Supplemental Decision and Order Awarding Attorney's Fees, the administrative law judge granted the requested hourly rates and made reductions in itemized entries based on employer's objections and the principles set forth in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), and he awarded claimant's counsel a fee, payable by employer, of \$43,124.46, representing 100.035 hours of attorney time at \$295 per hour, 3.6 hours of paralegal time at \$75 per hour, and \$13,344.13 in costs.

On appeal, employer challenges the administrative law judge's award of an hourly rate of \$295 for attorney work. Claimant responds, urging affirmance of the administrative law judge's decision.

Employer contends the administrative law judge erred in awarding claimant's counsel an hourly rate of \$295 because counsel's regular rate was not identified in his fee petition and he did not establish a prevailing market rate. Employer contends that, in contrast, its evidence establishes that the prevailing hourly rate for the Houston community is \$225, and that the administrative law judge's decision does not comply with the Administrative Procedure Act (APA), 5 U.S.C. §557, because the administrative law judge did not discuss employer's evidence.

The Supreme Court has held that the lodestar method, in which the number of hours reasonably expended in preparing and litigating the case is multiplied by a reasonable hourly rate, presumptively represents a "reasonable attorney's fee" under a federal fee-shifting statute, such as the Longshore Act.² See *Perdue v. Kenny A.*, 559

¹Specifically, the administrative law judge awarded claimant temporary total disability benefits from May 27, 2009 to April 16, 2013, and temporary partial disability benefits continuing from April 17, 2013. 33 U.S.C. §908(b), (e).

²A "reasonable attorney's fee" is calculated in the same manner in all federal fee-shifting statutes, including the Longshore Act. See *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992); *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 227 n.8, 43 BRBS 67, 70 n.8(CRT) (4th Cir. 2009); *Christensen v. Stevedoring Services of America*, 557 F.3d 1049, 1054, 43 BRBS 6, 8-9(CRT) (9th Cir. 2009); *B&G Mining*,

U.S. 542 (2010); *City of Burlington v. Dague*, 505 U.S. 557 (1992); *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986); *Blum v. Stenson*, 465 U.S. 886 (1984). The Court has also held that an attorney's reasonable hourly rate is "to be calculated according to the prevailing market rates in the relevant community." *Blum*, 465 U.S. at 895; *see also Kenny A.*, 559 U.S. at 551. The burden falls on the fee applicant to produce satisfactory evidence that the requested hourly rates are in line with those prevailing in the community for similar services by lawyers of comparable skill, experience, and reputation. *Stanhope v. Electric Boat Corp.*, 44 BRBS 107, 108 (2010); *see also Blum*, 465 U.S. at 896 n.11; *Christensen v. Stevedoring Services of America*, 557 F.3d 1049, 1053, 43 BRBS 6, 8(CRT) (9th Cir. 2009); *Westmoreland Coal Co. v. Cox*, 602 F.3d 276 (4th Cir. 2010).

Employer's contentions of error are without merit. The record establishes that claimant's counsel ultimately supported his requested hourly rate of \$295 for work performed in this case in 2012-2014 with the following documentation:³ 1) an administrative law judge's attorney's fee order from 2006 wherein counsel received an hourly rate of \$225 for attorney work performed in a case arising under the Defense Base Act; 2) a signed affidavit from William T. Powell, an attorney practicing in Houston, in which he acknowledged that he is "aware of the general billing rate for civil practice attorneys in the Houston area," that "since 2009 through the present [his] billing rates have been \$350 to \$400 for general billing and \$400 to \$500 for trial time," and that "these billing rates are within the norm for civil litigation in Houston, Texas for sole practitioners and smaller law firms;" 3) that counsel was awarded an hourly rate of \$295 by the district director for attorney work performed at that level in 2010 and 2011; and 4) evidence that he received his normal billing rate of \$295 per hour for attorney's services performed in 2011 through 2013 in conjunction with Section 8(i) settlements approved by the district director. Counsel also provided evidence of his experience and qualifications. Based on this evidence, the administrative law judge rationally awarded counsel his requested hourly rate of \$295. *Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011).

Moreover, we reject employer's contention that the administrative law judge's decision does not comport with the APA because he did not discuss at length employer's

Inc. v. Director, OWCP, 522 F.3d 657, 662, 42 BRBS 25, 27(CRT) (6th Cir. 2008); *Beckwith v. Horizon Lines, Inc.*, 43 BRBS 156, 159 (2009).

³The record indicates that counsel initially submitted to the administrative law judge only a fee petition, but that he supplemented that fee petition in submitting his response to employer's objections. The administrative law judge had all of this documentation before him prior to issuing his attorney's fee award.

hourly rate evidence.⁴ The administrative law judge acknowledged employer's objections, Supplemental Decision and Order at 3, and employer has not established error in the administrative law judge's reliance on claimant's evidence, notwithstanding that the administrative law judge did not specifically address employer's hourly rate evidence. Consequently, as the administrative law judge's award based on an hourly rate of \$295 is adequately based on claimant's evidence, we affirm the awarded rate. *Id.*; *see also Stanhope*, 44 BRBS 107; *see generally H.B. Zachry Co. v. Quinones*, 206 F.3d 474, 480, 34 BRBS 23, 27(CRT) (5th Cir. 2000) (court has not adopted "rigid" approach under which the administrative law judge "must articulate specifically the evidence that supported his decision and discuss the evidence that was rejected"). The administrative law judge's other findings regarding counsel's entitlement to an attorney's fee are affirmed as they are unchallenged on appeal. *See generally Scilio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007). Therefore, the administrative law judge's conclusion that claimant's counsel is entitled to an attorney's fee and costs, payable by employer, totaling \$43,124.46, is affirmed.

⁴Employer submitted to the administrative law judge a fee petition counsel submitted in another case, in which counsel sought an hourly rate of \$250 for work performed in 2010. Employer also submitted a fee petition from a different attorney, practicing in Metairie, Louisiana, who requested an hourly rate of \$225.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fee is affirmed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge