

AMOND D. STOKLEY )  
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 Claimant-Petitioner )  
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 v. )  
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 INGALLS SHIPBUILDING, ) DATE ISSUED: April 7, 1999  
 INCORPORATED )  
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 Self-Insured )  
 Employer-Respondent ) DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Stanford Young, Waynesboro, Mississippi, for claimant.

Paul M. Franke (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (95-LHC-1541) of Administrative Law Judge James W. Kerr, 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 may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for benefits under the Act based upon work-related injuries he sustained to his elbow, neck and back on July 30, 1992 and August 24, 1992. On June 2, 1997, the administrative law judge issued a Decision and Order Approving Compromise Settlement, wherein the administrative law judge approved the parties' settlement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i)(1994). Pursuant to the agreement, employer was

ordered to pay to claimant a lump sum of \$75,000, medical expenses related to claimant's neck and back injuries, and an attorney's fee to claimant's counsel, the amount to be determined by the administrative law judge. Regarding the issue of an attorney's fee, in the Order section of the decision, the administrative law judge noted that the parties' agreement stated that "[a]lthough some of the attorney's fees were generated while the matter was pending at the District Director's level it is agreed and stipulated that the Administrative Law Judge shall approve attorney's fees at all levels." Decision and Order at 3.

Thereafter, claimant's counsel submitted a petition for an attorney's fee for work performed before the district director and the administrative law judge, requesting a fee totaling \$10,000, representing 80 hours at \$125 per hour. In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge awarded claimant's counsel a fee totaling \$1,437.50, for 11.5 hours of legal services performed at an hourly rate of \$125. Relevant to the instant appeal, the administrative law judge, relying on *Revoir v. General Dynamics Corp.*, 12 BRBS 524 (1980), found that he was without authority to award claimant's counsel a fee for work performed before the district director, and thus, considered only the entries for services performed while the case was before the Office of Administrative Law Judges.

On appeal, claimant, without citation to legal authority, challenges the administrative law judge's denial of an attorney's fee for services rendered while the case was before the district director. Specifically, claimant argues that the denial of 66 hours of services by the administrative law judge should be reversed, as the settlement approved by the administrative law judge provided that he would consider all hours of work performed both before the administrative law judge and the district director. Employer responds, urging affirmance of the fee award and contending that claimant, in his appeal, failed to file a brief in accordance with the Board's regulations. In the alternative, employer agrees that the parties stipulated that the administrative law judge would evaluate all time incurred before the district director and the administrative law judge, but avers that the Board lacks the authority to approve the 66 hours of services rendered by claimant's counsel.

Section 28(c) of the Act, 33 U.S.C. §928(c), provides that where "any proceedings are had before the Board or any court of review of any action, award, order or decision, the Board or court may approve an attorney's fee for the work done before it by the attorney for the claimant." The implementing regulation provides: "Any person seeking a fee for services performed on behalf of a claimant with respect to claims filed under the Act shall make application therefor to the district director, administrative law judge, Board, or court, as the case may be, before whom the services were performed . . . ." 20 C.F.R. §702.132(a). It is therefore well-settled that each adjudicatory level must set the appropriate award of an attorney's fee for services performed before it. *See Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 594 F.2d 986, 9 BRBS 1089 (4th Cir. 1979); *Smith v. Alter Barge*

*Line, Inc.*, 30 BRBS 87 (1996); *Revoir*, 12 BRBS at 524; *Owens v. Newport News Shipbuilding & Dry Dock Co.*, 11 BRBS 409 (1979). The Board has held that the letter of referral from the district director to the Office of Administrative Law Judges marks the date on which informal proceedings terminate. See *Fitzgerald v. RCA International Service Corp.*, 15 BRBS 345 (1983). In the instant case, although the administrative law judge initially accepted the parties' stipulation that he would evaluate all of claimant's counsel's time incurred before both the district director and the administrative law judge, he properly found in his Supplemental Decision and Order that he was without statutory authority to award an attorney's fee for services rendered prior to the date the case was referred to the Office of Administrative Law Judges. Thus, as the administrative law judge's denial of 66 hours of time claimant's counsel incurred while the case was before the district director's is rational and in accordance with law, it is affirmed.<sup>1</sup> Claimant may file a petition for this work with the district director.

Accordingly, the Supplemental Decision and Order Awarding Attorney Fees of the administrative law judge is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge

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<sup>1</sup>Pursuant to Section 802.211 of the Board's regulations, 20 C.F.R. §802.211, a petition for review must be accompanied by a supporting brief which contains a discussion of the relevant law and evidence. See *Shoemaker v. Schiavone & Sons, Inc.*, 20 BRBS 214 (1988). In this case, claimant's Petition for Review was not accompanied by a brief. However, given the limited nature of the issue here, this document is sufficient to raise the dispositive issue, although it fails to offer any legal basis for us to overturn the administrative law judge's decision.