

GEORGE W. CALLOWAY )  
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 Claimant-Petitioner )  
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 v. )  
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 PPM CONTRACTORS, INCORPORATED ) DATE ISSUED: 08/23/2012  
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 and )  
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 LOUISIANA WORKERS' )  
 COMPENSATION CORPORATION )  
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 Employer/Carrier- )  
 Respondent ) DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees and Compensation Order Award of Attorney Fees on Reconsideration of David A. Duhon, District Director, United States Department of Labor.

Warren A. Perrin and Douglas R. Summerlin (Perrin, Landry, deLaunay, Dartez & Ouellet), Lafayette, Louisiana, for claimant.

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

PER CURIAM:

Claimant appeals the Compensation Order Award of Attorney's Fees and Amended Compensation Order Award of Attorney Fees on Reconsideration of District Director David A. Duhon (Case No. 07-143288) 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 Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant sustained a work injury in March 1996, and employer began paying compensation and medical benefits in 1997. Employer terminated benefits for the period from October 28, 2006 to December 12, 2006, prompting claimant to file a claim.<sup>1</sup> An informal conference held on March 20, 2007, resulted in the district director's recommending claimant's entitlement to benefits for the period in question, as well as to permanent total disability benefits from March 2006 until such time as employer identified the availability of suitable alternate employment. The district director also recommended that employer authorize additional medical treatment for claimant, and that the parties exchange "all the claimant's wage information so that an AWW/CR can be determined."

On January 7, 2010, claimant's counsel, Ms. Rambin, requested an informal conference before the district director to address an alleged shortfall in employer's payment of disability benefits to claimant in the amount of \$4,179.05 for the 32-week period between July 11, 2002 and August 20, 2002. Prior to any proceedings before the district director on this issue, the parties reached a settlement, as documented by an informal conference held on April 27, 2010, wherein they stipulated that claimant is capable of returning to work, that suitable alternate employment was identified, and that employer would pay claimant \$84,000 in disability benefits and provide future medical payments, with a Medicare set-aside of \$288,000. The settlement also provided for Ms. Rambin, who worked for Chopin, Wagar, Richard & Kutcher (Chopin) until February 1, 2008, and thereafter for Taylor, Wellons, Politz & Duhe, and Warren Perrin, to file petitions for an attorney's fee with the district director. The settlement application was submitted and finally approved on May 2, 2011. 33 U.S.C. §908(i). In the meantime, the Chopin firm, Ms. Rambin, and Mr. Perrin each filed attorney's fee petitions with the district director.

On July 16, 2008, the district director had awarded the Chopin firm an attorney's fee totaling \$5,409.90. In an order issued on January 27, 2010, the district director denied attorney's fees to Ms. Rambin and to Mr. Perrin.<sup>2</sup> Neither of these orders was

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<sup>1</sup>Specifically, claimant sought recovery of benefits for the period of employer's non-payment, as well as a determination that his condition had become permanent and stationary and additional medical benefits.

<sup>2</sup>Mr. Perrin sought attorney's fees for work performed from March 2, 2006 to August 6, 2009, while Ms. Rambin sought attorney's fees for work performed from March 6, 2008 to July 1, 2009. In the 2010 Order, the district director stated that Ms. Rambin had previously been awarded a fee and costs through January 31, 2008, while she worked at Chopin, that no additional fees are due Ms. Rambin since no further informal conferences had been held, and that Mr. Perrin is not entitled to any fee since there is no

appealed to the Board. Pertinent to claimant's appeal in this case, Ms. Ramin subsequently filed a fee petition with the district director for time expended from April 9, 2010 to May 2, 2011, for \$11,053.92, representing 48.75 hours of attorney time at a rate of \$225, and costs of \$85.17. She submitted a second fee petition for time expended from March 6, 2008 to March 8, 2010, for \$14,510.39, representing 63.75 hours at \$225 per hour and costs of \$166.64. She also submitted a fee petition on behalf of Mr. Perrin for time expended from March 2, 2006 to April 30, 2010, for \$32,111.90, representing 244.20 hours at \$125 per hour, and costs of \$1,586.90. The district director again found that Mr. Perrin is not entitled to a fee in this case. He reduced the number of compensable hours for Ms. Ramin, and awarded her a fee of \$8,700.29, representing 37.875 hours at a rate of \$225 and costs of \$178.41.

Addressing claimant's motion for reconsideration, the district reiterated that Mr. Perrin is not entitled to a fee since only Ms. Ramin established that she rendered services in pursuit of additional benefits for the period from January 7, 2010, and there is no evidence of the need for co-counsel. The district director, however, awarded Ms. Ramin an additional two hours at \$225 per hour for work performed subsequent to January 7, 2010.

On appeal, Mr. Perrin challenges the district director's June 7 and July 25, 2011 orders denying him an attorney's fee. In his brief, Mr. Perrin states that he was first retained by claimant, and he associated Ms. Ramin to handle certain aspects of the case. Mr. Perrin avers that his fee petition demonstrates he had regular contact with employer's claims adjuster and vocational rehabilitation experts, as well as with claimant. He contends his services were necessary to the successful resolution of claimant's claim, are not duplicative of the Ms. Ramin's services, and therefore are compensable. Employer did not file a response brief.

There is nothing inherently objectionable to several attorneys participating in the litigation of a claim where the complexity of the case or other factors warrants it. *See O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000); *Parks v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.*, 202 F.3d 259 (4<sup>th</sup> Cir. 1999)(table). Claimant's counsel, however, bears the burden of establishing the necessity of co-counsel's services in order for those services to be compensable. *See generally Abbott v. Director, OWCP*, 13 BLR 1-15 (1989).

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indication that Mr. Perrin obtained additional benefits for claimant for work performed at the district director level as only Ms. Ramin had appeared at the informal conference.

In his Order dated June 7, 2011, the district director denied Mr. Perrin an attorney's fee for the reasons "indicated in the order issued on January 27, 2010," as well as because he found "that there was no need for a co-counsel in this case." In his January 27, 2010 order, the district director denied Mr. Perrin an attorney's fee because "there is no indication that he obtained any additional benefits for work performed through this office as Ms. Ramin was the one who argued the case at the informal conference." However, there is no requirement that an attorney actually participate at the informal conference in order to be entitled to an attorney's fee at the district director level. Rather, the key factor in determining whether an attorney's work is compensable is whether, at the time the service was rendered, the legal work provided was reasonable and necessary for the claim. *See* 20 C.F. R. §702.132; *O'Kelley*, 34 BRBS 39. Moreover, the district director's alternative rationale for denying Mr. Perrin an attorney's fee, i.e., because "there was no need for a co-counsel in this case," is, in the absence of further explanation as to why he reached this conclusion, arbitrary and, thus, cannot be affirmed. *See generally Ferguson v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 17 (2002). Therefore, we vacate the district director's denial of a fee for time expended by Mr. Perrin and remand the case for the district director to address Mr. Perrin's entitlement to an attorney's fee for time expended after August 6, 2009.<sup>3</sup> *Id.*

On remand, the district director must address with specificity the compensability of Mr. Perrin's services, determining first whether his services were or were not duplicative of those provided by Ms. Ramin. *See Parks*, 32 BRBS at 92. Mr. Perrin's fee petition details the services he rendered in this case.<sup>4</sup> The petition lists 11 entries for

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<sup>3</sup>We affirm the district director's denial of an attorney's fee to Mr. Perrin for the period from March 2, 2006 to August 6, 2009. The district director specifically denied a fee for these services in his January 27, 2010 fee order. As counsel did not appeal the denial of a fee at that time and the order was not interlocutory, he cannot re-litigate his entitlement to a fee during this period as the district director's order is *res judicata*. *See Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5<sup>th</sup> Cir. 1986), *aff'g Downs v. Texas Star Shipping Co.*, 18 BRBS 37 (1986); *see also Sider v. Valley Lines*, 857 F.2d 1043 (5<sup>th</sup> Cir. 1988).

<sup>4</sup>Section 702.132(a), with which Mr. Perrin's fee petition complies, states in pertinent part:

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, ... The application shall be supported by a complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of

which a fee is requested after August 6, 2009, totaling 13.7 hours. These entries describe, inter alia, meetings with claimant regarding vocational rehabilitation and settlement matters. An attorney may be compensated for time spent in conferences with claimant which is necessary and related to the claim. *Morris v. California Stevedore & Ballast Co.*, 10 BRBS 375 (1979). The pertinent inquiry under Section 702.132(a) is whether, at the time the services were rendered, the services were reasonably thought to be necessary to the pursuit of the claim. *O'Kelley*, 34 BRBS 39; *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Bakke v. Duncanson-Harrelson Co.*, 13 BRBS 276 (1980); *Morris*, 10 BRBS at 382-383. Thus, the services described in Mr. Perrin's fee petition of meetings with claimant regarding vocational rehabilitation and settlement discussions and review of emails concerning settlement are compensable if they were necessary at the time they were performed and were not directly duplicative of work performed by Ms. Ramin.<sup>5</sup> See *Parks*, 32 BRBS at 92.

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each person performing such work, the normal billing rate for each such person, and the hours devoted by each such person to each category of work. Any fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded, ...

20 C.F.R. §702.132(a).

<sup>5</sup> Co-counsel are entitled to a reasonable fee for communicating with each other. *Charles v. Director, OWCP*, 3 BLR 1-80 (1981).

Accordingly, we vacate the district director's denial of an attorney's fee for services provided by Mr. Perrin subsequent to August 6, 2009. The case is remanded to the district director for further proceedings concerning the Perrin fee petition consistent with this opinion. In all other respects, the district director's orders are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge