

DEREK B. HUDGINS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
NABORS & LOFFLAND)	DATE ISSUED: <u>Dec. 13, 2002</u>
DRILLING COMPANY)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Phil Watkins, San Antonio, Texas, for claimant.

Andrew Z. Schreck (Galloway, Johnson, Tompkins, Burr & Smith), Houston, Texas, for self-insured employer.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (1998-LHC-2727) of Administrative Law Judge Richard D. Mills 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. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

As compensation for a head and neck injury sustained in March 1997, the administrative law judge awarded claimant temporary total disability benefits from March 13, 1997, until November 3, 1997, based on an average weekly wage of \$551. He also awarded claimant medical benefits, interest and an attorney's fee, and he assessed an additional 10 percent on unpaid compensation against employer pursuant to Section 14(e), 33 U.S.C. §914(e). Subsequently, he denied employer's motion for reconsideration and request to re-open the record. The Board affirmed the administrative law judge's decisions. *Hudgins v. Nabors & Loffland*

Drilling Co., BRB No. 99-1314 (Sept. 21, 2000).

On August 20, 1999, claimant's counsel filed a petition for an attorney's fee in the amount of \$28,210.58, representing 84.41 hours of services at an hourly rate of \$200, 20 hours of services at an hourly rate of \$175, 31.91 hours of services at an hourly rate of \$100, 2.02 hours of services at an hourly rate of \$65, plus expenses in the amount of \$4,506.28. In a Supplemental Fee Request filed on September 27, 2001, counsel sought an additional \$2,430.49, representing 6.75 hours of services at an hourly rate of \$200 and 23 hours of services at an hourly rate of \$50. Employer filed objections to the request. In a supplemental decision, the administrative law judge addressed each objection, agreeing with some and reducing the fee accordingly. Supp. Decision and Order at 2-6. The administrative law judge ultimately awarded claimant's counsel a total fee of \$18,963.49, representing 77.035 hours of services at an hourly rate of \$175, 19.25 hours of services at an hourly rate of \$150, 28.41 hours of services at an hourly rate of \$100, 2.02 hours of services at an hourly rate of \$65, and 23 hours of services at an hourly rate of \$50, less 25 percent to reflect claimant's limited success, plus expenses in the amount of \$3,595.29. Employer appeals the fee award, urging the Board to further reduce the fee, in accordance with *Hensley v. Eckerhart*, 461 U.S. 424 (1983), due to claimant's lack of success in obtaining a continuing award of temporary total disability benefits. Claimant responds, urging affirmance.

An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work performed and shall take into account the quality of the representation, the complexity of the issues, and the amount of benefits awarded. *See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). When a claimant obtains a limited degree of success, then the fact-finder should award his attorney a fee in an amount which is reasonable in relation to the results obtained. *Hensley*, 461 U.S. 424; *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *George Hyman Construction Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161(CRT) (D.C. Cir. 1992).

In this case, employer disputed claimant's right to disability and medical benefits, and it had not paid any benefits to claimant as of the date of the hearing. The administrative law judge awarded claimant a period of temporary total disability benefits as well as related medical benefits, an additional assessment pursuant to Section 14(e), and interest. Because the administrative law judge rejected claimant's request for a continuing award of temporary total disability benefits, and instead awarded disability benefits over a finite period of time, it was reasonable for him to conclude that claimant was 75 percent successful in the pursuit of his claim. Contrary to employer's assertion, a comparison between what claimant obtained

¹Employer challenges no other aspect of the fee award.

and employer's refusal to pay any benefits establishes that the administrative law judge rationally concluded that claimant was more successful than employer argues.

Compare Hill v. Avondale Industries, Inc., 32 BRBS 186 (1998), *aff'd sub nom. Hill v. Director, OWCP*, 195 F.3d 790, 33 BRBS 184(CRT) (5th Cir. 1999), *cert. denied*, 120 S.Ct. 2215 (2000). As the administrative law judge rationally reduced the fee award by 25 percent in light of claimant's limited success in obtaining benefits, we hold that he did not abuse his discretion in rejecting employer's assertion that the fee award should be further reduced, and we affirm the administrative law judge's decision. See *Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001); *Fagan v. Ceres Gulf, Inc.*, 33 BRBS 91 (1999); *Stowars v. Bethlehem Steel Corp.*, 19 BRBS 134 (1986).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge