BRB Nos. 05-0345 and
05-0632

CHRIS EARNSHAW	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SEALAND SERVICES, INCORPORATED	)	DATE ISSUED: 12/29/2005
	)	
and	)	
	)	
CRAWFORD & COMPANY	)	
	)	
Employer/Carrier-	)	
Petitioners	)	DECISION and ORDER

Appeals of the Decision and Order and Order Granting Attorney's Fees of William Dorsey, Administrative Law Judge, United States Department of Labor, and the Compensation Order Approval of Attorney Fee and Compensation Order Denial of Request for Reconsideration of Karen P. Staats, District Director, United States Department of Labor.

Kenneth Kirk (Kenneth Kirk & Associates), Anchorage, Alaska, for claimant.

Matthew D. Regan (Holmes Weddle & Barcott, P.C.), Anchorage, Alaska, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order and Order Granting Attorney's Fees (2003-LHC-1097) of Administrative Law Judge William Dorsey, and the Compensation Order Approval of Attorney Fee and Compensation Order Denial of Request for Reconsideration (Case No. 14-131632) of District Director Karen P. Staats 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. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant sustained an injury to his left knee, as well as an alleged injury to his back, while working for employer at the remote port of Dutch Harbor, Alaska, on October 11, 1999. Claimant experienced intense "shooting pain" upon his return to full-duty work and thereafter traveled to Placerville, California,[1] where, on November 23, 1999, Dr. Ling diagnosed a meniscus or chondral lesion in the left knee and a left hamstring strain. Dr. Ling subsequently performed an arthroscopy on December 10, 1999, and thereafter prescribed medication and physical therapy.

As a result of significant back pain experienced during physical therapy, claimant saw a spine specialist, Dr. Molitor, who diagnosed an annular tear at the L4-L5 level, which he related to claimant's October 11, 1999, work fall. Employer's Exhibit (EX) 4 at 82. Employer's insurance adjuster ceased authorization of Dr. Ling's recommended physical therapy in June 2000, based on Dr. Richardson's conclusion that claimant reached maximum medical improvement with regard to his left knee injury as of June 29, 2000, and because it included treatment of claimant's allegedly non-work-related back injury. Claimant subsequently sought additional disability and medical benefits under the Act.

In his decision, the administrative law judge initially found that it is undisputed that claimant's left knee condition occurred as a result of the October 11, 1999, work accident, and that the record as a whole demonstrates that claimant's back condition is likewise related to that work accident. The administrative law judge awarded claimant temporary total disability benefits from October 27, 1999,[2] finding that claimant cannot

[1] There is no general practice or other physician available in the Dutch Harbor/Unalaska area, much less an orthopedic specialist. As such, James Hickman, a physician's assistant at the Iliuliuk Clinic, who initially diagnosed a left knee contusion but ultimately removed claimant from work until he could be examined by an orthopedic specialist, represented the most qualified medical professional in that immediate area, prompting claimant's travel to his parents' home in Placerville, California, for additional treatment.

[2] The administrative law judge found that claimant would not reach maximum medical improvement with regard to his overall condition until "the full course of therapy for the knee and back is completed." Decision and Order at 7.

return to his usual employment and employer has not put forth sufficient evidence as to the availability of suitable alternate employment. In addition, the administrative law judge awarded claimant medical benefits for the treatment of his back and left knee conditions, including the continued physical therapy recommended by his treating physician, Dr. Ling.

Claimant's counsel then sought attorney's fees totaling $5,520.50 for work performed before the district director,[3] and $35,254.50 for work performed before the administrative law judge.[4] Employer filed objections to counsel's fee petitions. In his Order Granting Attorney's Fees, the administrative law judge ordered employer to pay a fee totaling $30,097.50, plus the requested costs of $2,880.06. In her Compensation Order Approval of Attorney Fee, the district director awarded a fee in the amount of $5,793. The district director denied employer's request for reconsideration of her attorney's fee award.

On appeal, employer challenges the administrative law judge's findings that claimant's back condition is work-related, that claimant's left knee condition has not yet reached maximum medical improvement, that employer has not established the availability of suitable alternate employment, and that claimant is entitled to additional medical benefits (BRB No. 05-0345). Employer also challenges the awards of attorney's fees in this case by the administrative law judge (BRB No. 05-0345S) and district director (BRB No. 05-0632). Claimant responds, urging affirmance of the administrative law judge's decisions, and the district director's Compensation Order.

Employer contends that the administrative law judge erred in finding that claimant's annular tear and resulting back condition are causally related to the October 11, 1999, work accident. Employer asserts that the administrative law judge improperly accorded greatest weight to Dr. Ling's opinion with regard to the cause of claimant's back condition, as it is contrary to the evidence of record, specifically the opinions of Drs. Molitor, Pattison and Brooks, indicating that claimant's lack of back pain for over

[3] The petition for fees before the district director involved .6 hours of attorney work at an hourly rate of $200, 39.3 hours of attorney work at an hourly rate of $135, and 1.9 hours of paralegal work at $50 per hour, as well as an additional 1.7 hours of attorney time at $200 to review employer's objections to the attorney's fee petition.

[4] The petition for fees before the administrative law judge involved 123.3 hours of attorney work at an hourly rate of $200, 24.6 hours of attorney work at an hourly rate of $160, 42.3 of attorney work at an hourly rate of $135, 13.4 hours of paralegal work at $70 per hour, and 3.4 hours of paralegal work at $50 per hour, plus $2,880.06 in costs.

four months from the date of the injury precludes a causal connection between his work accident and the back condition.

Initially, we affirm the administrative law judge's finding that claimant is entitled to the Section 20(a) presumption with regard to his back condition as it is supported by substantial evidence. It is undisputed that claimant sustained an annular tear and resulting back condition, and the record establishes that said conditions could have been caused by claimant's fall at work on October 11, 1999. *See* HT at 36-40; CX 3, Dep. at 18-19, 44-46; EX 2. *See Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1990). We likewise affirm, as undisputed, the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption. *See Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). Once the Section 20(a) presumption is rebutted, the presumption no longer controls, and the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); s*ee also Director, OWCP v. Greenwich Collieries*, 512 U.S. 257, 28 BRBS 43(CRT) (1994).

In this regard, the administrative law judge determined that Dr. Molitor's testimony, in conjunction with claimant's testimony and the opinion of Dr. Ling, supports a conclusion that claimant's annular tear and resulting back condition are related to his October 11, 1999, fall. Dr. Molitor testified that claimant's leg/hamstring pain was probably emanating from his back, CX 3, Dep. at 26-27, and that, based on claimant's symptoms, his MRI, and other medical evidence, a fall of seven to nine feet, like the one described by claimant herein, could have caused the annular tear and resulting back condition. CX 3, Dep. at 39, 46. Additionally, while Dr. Molitor stated that most people with an annular tear "have fairly central back pain," CX 3, Dep. at 43, which presents itself "fairly soon after they get an annular tear," CX 3, Dep. at 46, he acknowledged that "it's possible that they just have some of the leg pain," CX 3, Dep. at 44, and that in this particular case, it is quite plausible that claimant's knee pain was so intense that it may have initially masked any back pain occurring from an annular tear sustained in claimant's work-related fall. CX 3, Dep. at 18-19, 44-46. Moreover, in contrast to employer's assertion, Dr. Ling's opinion that "in light of the mechanism of injury and [claimant's] history, I believe that [claimant's back problem] is related," to his work accident, EX 2, is akin to the conclusion reached by Dr. Molitor. CX 3, Dep. at 39, 46.

Moreover, the administrative law judge provided a sufficient rationale for rejecting the opinions of Drs. Pattison, Richardson and Brooks, that claimant's work-related fall did not cause his annular tear, or contribute or aggravate his back condition. Specifically, he accorded diminished weight to Dr. Pattison's opinion because it is premised on the mistaken belief that claimant did not report any back pain prior to

February 2000. In contrast, the administrative law judge found that claimant made complaints of hamstring pain at his first visit to Dr. Ling, in November 1999, saying that the pain had been present for weeks.[5] The administrative law judge rejected Dr. Richardson's opinion because he dismissed any association between claimant's back and knee problems and the work accident without analysis, despite contrary evidence in the medical records of Drs. Ling and Molitor. Similarly, the administrative law judge rejected Dr. Brook's causation opinion because the "conclusions he reaches are heavily colored by the conviction that claimant lacks credibility," Decision and Order at 11, a premise which is contrary to the administrative law judge's determination that claimant is a credible witness.[6] *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963).

As the administrative law judge acted within his discretion in crediting the opinions of Drs. Molitor and Ling, as well as claimant's testimony concerning his work accident and resulting pain, over those of Drs. Pattison, Richardson and Brooks, and his determination that claimant's annular tear and current back condition are causally related to his employment is supported by substantial evidence, it is affirmed. *See Calbeck*, 306 F.2d 693; *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961*); see also Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 470 U.S. 911 (1979).

Employer next asserts that the administrative law judge incorrectly determined that claimant's left knee has not reached maximum medical improvement, since Dr. Ling's opinion, upon which he relies, is inconsistent with the record as a whole. Employer further contends that the administrative law judge improperly applied the treating physician rule discussed in *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir.

[5] Dr. Pattison also conceded that "a fall on the left knee sufficient enough to cause condylar damage and with the mechanism that he describes is certainly consistent with causing or aggravating a back injury," and further that "if additional records show any evidence of a back problem at or near the time of the accident, then I definitely would like to review the records and I might change my opinion." EX 11. Moreover, Dr. Pattison admitted, at deposition, that claimant "maintained that he had back problems while in Dutch Harbor after the accident," EX 30, Dep. at 22, yet he continued to state that he had no documentation of back pain from around the time of claimant's fall at work.

[6] The administrative law judge also found Dr. Brook's statement that he "doubts that falling into a prone position would create the annular tear," suspect as he "seems alone in this opinion," for even Dr. Pattison did not dispute the mechanism of the back injury. Decision and Order at 12.

1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir.), *cert. denied*, 528 U.S. 809 (1999), in according greatest weight to the opinion of Dr. Ling, as that rule has been rejected by the United States Supreme Court in *Black & Decker Disability Plan v. Nord*, 538 U.S. 822 (2003).

In *Nord*, the Supreme Court held that the Employee Retirement Income Security Act, unlike the Social Security Act, does not require plan administrators to accord special deference to the opinions of treating physician. *Nord*, 538 U.S. at 829-30. As the Board recently discussed, the Court did not prohibit a fact-finder from giving weight to a treating physician, but rather stated that it was not appropriate to have a rule requiring such deference in the administration of a voluntary contractual plan. *See Monta v. Navy Exchange Service Command*, BRBS (2005), BRB No. 05-0298, slip. op. at 6, n. 2. Thus, as the administrative law judge determined, *Nord* does not overrule the holding in *Amos*. *Id.* Moreover, the Court in *Nord* recognized that some courts have approved a treating physician rule "for disability determinations under the Longshore and Harbor Workers' Compensation Act," and that the Secretary of Labor has adopted a version of the rule for benefits determinations under the Black Lung Benefits Act, 30 U.S.C. §901 *et seq.* *See Nord*, 538 U.S. at 830; 20 C.F.R. §718.104(d)(5) (2002).

The determination of when maximum medical improvement is reached is primarily a question of fact based on medical evidence. *Eckley v. Fibrex & Shipping Co., Inc.*, 21 BRBS 120 (1988); *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). While the administrative law judge herein relied, in large part, on the fact that Dr. Ling is claimant's treating physician, he nevertheless fully considered all of the relevant opinion evidence of record and rationally determined that Dr. Ling's opinion, in conjunction with the opinion of Dr. Molitor and the supporting testimony proffered by claimant regarding his symptoms and condition, is entitled to the greatest weight.[7] *See generally Lopez v. Stevedoring Services of America*, BRBS (2005). As the administrative law judge's decision to credit Dr. Ling's opinion that claimant would not reach maximum medical improvement with regard to his left knee until the full course of physical therapy for the knee and back is completed is supported by substantial evidence, his conclusion that claimant has not reached maximum medical improvement with regard to his left knee and back conditions is affirmed. *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989); *see also Abbott v. Louisiana Ins. Guaranty Ass'n*, 27 BRBS 192 (1993), *aff'd*, 40 F.3d 122, 29 BRBS 22(CRT) (5th Cir. 1994).

[7] The administrative law judge found that Dr. Pattison agreed with Drs. Ling and Molitor that claimant had not reached maximum medical improvement as of the date he examined claimant in April 2000, EX 30, Dep. at 51, and he further rejected Dr. Richardson's opinion that claimant reached maximum medical improvement with regard to his left knee as of June 28, 2000, because "he does not give a very specific or persuasive reason" for that conclusion. Decision and Order at 10.

Employer also argues that the administrative law judge erred in finding that claimant is unable to perform any work and, thus, is totally disabled. Employer acknowledges that Dr. Ling indicated that claimant could not perform any work, but asserts that claimant's treating physician for his back, Dr. Molitor, otherwise opined that claimant was capable of performing work within certain physical restrictions as of June 27, 2001. Additionally, employer maintains that it presented sufficient evidence of suitable alternate employment by virtue of positions it identified at its Dutch Harbor facility as a top pick operator, forklift operator, loader operator, truck driver, and checker, all of which were approved by Drs. Brooks and Haag. Employer further avers that claimant's entitlement to total disability benefits should have actually ceased as of June 29, 2000, as claimant stipulated that suitable alternate employment was available to him as June 30, 2000.

To establish a *prima facie* case of total disability, claimant must show that he is unable to return to his usual employment due to his work-related disability. *Harrison v. Todd Pacific Shipyards Corp.*, 21 BRBS 339 (1988). We affirm the administrative law judge's finding that claimant cannot return to his former longshore work as he permissibly credited the opinions of Drs. Molitor, Brooks and Ling, as well as testimony by claimant, that he is not physically capable of performing heavy labor. *Id.* If claimant succeeds in establishing that he is unable to perform his usual work duties, the burden shifts to employer to demonstrate the availability of suitable alternate employment. In order to meet this burden, employer must demonstrate that specific job opportunities, which claimant could perform considering his age, education, background, work experience, and physical restrictions, are realistically and regularly available in claimant's community. *See Edwards v. Director, OWCP*, 999 F.2d 1374, 27 BRBS 81(CRT) (9th Cir. 1993); *Bumble Bee Seafoods v. Director, OWCP*, 629 F.2d 1327, 12 BRBS 660 (9th Cir. 1980).

The administrative law judge rejected the longshoring jobs approved by Dr. Haag in the Dutch Harbor region since this work is generally categorized as "very heavy," and therefore is contrary to the opinions of Drs. Molitor and Brooks, who agreed that claimant should not engage in the strenuous lifting done by a warehouse worker or "longshoreman" because of his history of prior back injuries. In addition, the administrative law judge found that since claimant had lost his relative seniority with the ILWU, he could not expect to obtain the skilled, less physically demanding, driving jobs he had obtained when he was previously injured, and instead would have to return to the lower status as a casual laborer, which is beyond the scope of his post-injury physical capabilities. Moreover, the administrative law judge found that as a small and remote work site, workers in the Dutch Harbor region with enough seniority to obtain driving jobs on a given day would still have to assist in other heavy physical jobs, such as lashing, on a regular basis. Thus, the positions employer identified at its own facility are

insufficient to establish suitable alternate employment. *See generally Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT) (5th Cir. 1996).

The administrative law judge also concluded that the unskilled jobs identified by Dr. Haag, PhD. in California "are not ones claimant could reasonably compete for," Decision and Order at 13, since these jobs assumed the ability to work a regular 40-hour week, something to which claimant, given his need for four to six months of aggressive physical therapy, as prescribed by Dr. Ling, could not commit. The administrative law judge specifically determined that the "evidence fails to show that the potential employers Dr. Haag identified would accommodate regular absences for treatment by a new employee in an unskilled job," and, absent such proof, the administrative law judge refused to find that such concessions might be made by any potential employer. The administrative law judge further rejected employer's contention that claimant's stipulation that he could earn at least $8.25 an hour, or $330 per week at suitable alternate work "from the date of maximum medical improvement," demonstrates claimant's ability to perform suitable alternate employment. The administrative law judge found that the stipulation does not say that claimant could actually work 40 hours per week while receiving that physical therapy, and thus it does not establish that claimant can reasonably obtain the positions identified. In any event, the parties' stipulation is limited to the identification of claimant's post-injury wage-earning capacity "from the date of maximum medical improvement." Thus, it is not, in contrast to employer's position, a concession by claimant that he is, in fact, capable of performing suitable alternate work. Moreover, we note that the stipulation itself is presently moot since the point in time it references, *e.g.*, the date of maximum medical improvement, has not been attained.

As the administrative law judge's conclusion that employer did not show a reasonable likelihood that claimant would be hired if he diligently sought the jobs identified by Dr. Haag as available on the open market is supported by substantial evidence, it is affirmed. *Johnson v. Director, OWCP*, 911 F.2d 247, 24 BRBS 3(CRT) (9th Cir. 1990), *cert. denied*, 499 U.S. 959 (1991). Accordingly, the administrative law judge's award of temporary total disability benefits is affirmed. *Id.*

Employer lastly argues that the administrative law judge's determination that claimant is entitled to future medical benefits for his knee and back condition is irrational and unsupported by the evidence of record. Employer maintains that it is too speculative for the administrative law judge to award such open-ended benefits given that claimant has already received extensive physical therapy services for his work-related left knee condition and was thoroughly trained in a home exercise and strengthening program, thereby diminishing the need for any further professional treatment services. Employer also renews his assertion that the administrative law judge erred in his application of *Amos* in resolving issues related to claimant's continued treatment for his injuries.

Section 7(a) requires an employer to pay for all reasonable and necessary medical expenses arising from a work-related injury. 33 U.S.C. § 907(a); *Amos*, 153 F.3d 1051, 32 BRBS 144(CRT). Claimant has established a *prima facie* case for compensable medical treatment where a qualified physician indicates treatment is necessary for a work-related condition. *See Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989); *Ballesteros*, 20 BRBS 184. In order for medical care to be compensable, it must be appropriate for the injury, 20 C.F.R. §702.402, and the administrative law judge has the authority to determine the reasonableness and necessity of a procedure refused by employer. *Weikert v. Universal Maritime Service Corp.*, 36 BRBS 38 (2002). In *Amos*, the United States Court of Appeals for the Ninth Circuit, in whose jurisdiction the present case arises, held that "when the patient is faced with two or more valid medical alternatives, it is the patient, in consultation with his own doctor, who has the right to chart his own destiny." *Amos*, 153 F.3d at 1054, 32 BRBS at 147(CRT); *see Monta*, slip op. at 6, n. 2.

The record establishes that two physicians, Drs. Ling and Molitor, as well as claimant's treating physical therapist, Ms. Hardin, advocated for the continuation and as to the beneficial nature of physical therapy for proper treatment of claimant's work-related injuries. EX 2 at 22, 24, 25, 28; EX 4. Thus, in contrast to employer's position, claimant's need for continued medical treatment is far from speculative. Moreover, a continuation of physical therapy is, as the administrative law judge determined, reasonable and necessary for the treatment of claimant's injuries in this case, in light of the opinion of claimant's treating physician, Dr. Ling. *Amos*, 153 F.3d at 1054, 32 BRBS at 147(CRT). With regard to any future treatment, claimant remains required to establish that the treatment is reasonable and necessary for his work-related injuries in order to be entitled to medical benefits, payable by employer, for said treatment. *Romeike*, 22 BRBS 57. Thus, we reject employer's contentions and therefore affirm the administrative law judge's award of medical benefits in this case.

Employer argues that the attorney's fees awarded by the administrative law judge in this case are not commensurate with the limited success directly attributable to the efforts put forth by claimant's attorney. Employer's contention lacks merit.[8] In the instant case, the administrative law judge explicitly factored in claimant's success for, in

[8] In light of the affirmance of the administrative law judge's award of benefits, we reject employer's argument that the attorney's fee awards should be reversed due to a complete lack of success. Moreover, employer's assertion that the award of benefits to claimant is due to the parties' stipulations and not the efforts of claimant's counsel is without merit for, as noted above, the stipulation in question, *i.e.*, as to claimant's average weekly wage once his injuries reach maximum medical improvement, have no bearing on the administrative law judge's award.

issuing his fee award, he recognized that counsel's work "led to payment to the claimant of $137,160.65 in a lump sum as past compensation, ongoing weekly temporary total disability compensation of $665.72 per week, and the right to medical benefits." Order Granting Attorney's Fees at 1. *See Hensley v. Eckerhart*, 461 U.S. 424 (1983).

Employer next asserts that the administrative law judge erred by failing to consider relevant factors, including the normal hourly rates in Anchorage, Alaska, or claimant's counsel's inexperience in representing longshoremen, in determining the reasonableness of the hourly rates requested. In contrast, the administrative law judge considered the pertinent factors in finding that claimant's counsel is entitled to a maximum hourly rate of $200, *see* n. 4, *infra*. 20 C.F.R. §702.132(a). In particular, the administrative law judge found that claimant's counsel proved, via affidavit,[9] that he typically bills his hourly clients at a $200 rate, that "rates awarded to experienced longshore counsel, who presumably are more efficient, currently are well over $200 per hour," Order Granting Attorney's Fees at 4, and that "the necessary work, quality of the representation and complexity of the issues are reflected in the hourly rate." Order Granting Attorney's Fees at 5. Moreover, the administrative law judge observed that employer provided no evidentiary basis to support its assertion that the customary fee for similar services in claimant's counsel's locale is less than that requested. As such, we affirm the administrative law judge's finding that the $200 hourly rate requested is reasonable. *See Newport News Shipbuilding & Dry Dock Co v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000); *McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998).

We further reject employer's assertions that the administrative law judge erroneously accepted many hours of time unnecessarily spent on this case and that his award of travel fees is excessive. The administrative law judge found that claimant's counsel's efforts in attempting "to find mainland counsel was part of an effort to reduce costs," that "consulting with more experienced trial counsel to evaluate settlement offers was also reasonable," particularly given that the lawyers which claimant's counsel consulted were not being paid for their time, and that there were "no derelictions" in claimant's counsel's efforts in this case. Order Granting Attorney's Fees at 4-5. As for counsel's hotel and travel costs, the administrative law judge likewise found it reasonable for claimant's counsel to pay for return trip airfare to California, as well as to pay "rather modest hotel charges for three nights," in order to attend the hearing in Sacramento,

[9] Claimant's counsel submitted affidavits from two attorneys in Anchorage, Alaska, who indicated that $200 to $250 per hour is a reasonable fee for attorney work in cases arising under the Act. *See generally Powell v. Nacirema Operating Co., Inc.*, 19 BRBS 124 (1986).

California. The administrative law judge observed that claimant's "injury occurred in a remote part of Alaska, but the case was tried in California, where the claimant resided with family after he could not return to longshore work." Order Granting Attorney's Fees at 4. As such, these costs are reasonable, necessary, and in excess of that normally considered to be a part of overhead. *See generally Brinkley v. Dep't of Army/NAF*, 35 BRBS 60 (2001); *Swain v. Bath Iron Works Corp.*, 14 BRBS 657 (1982); *Lopes v. New Bedford Stevedoring Corp.*, 12 BRBS 170 (1979). Consequently, as the administrative law judge addressed each of employer's specific objections and gave rational reasons for rejecting or approving each one, employer's arguments on appeal do not establish an abuse of discretion. *See generally Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *Roach*, 16 BRBS 114. The administrative law judge's award of an attorney's fee, payable by employer, of $30,097.50 and costs of $2,880.06 is therefore be affirmed.

We likewise affirm the district director's award of an attorney's fee, payable by employer, totaling $5,793, as she considered each of employer's objections and provided sufficient reasons for rejecting them. *Moyer*, 124 F.3d 1378, 31 BRBS 134(CRT). In awarding an hourly rate of $200, the district director recognized the complexity of this case, *i.e.*, she observed that the "claim file is approximately four inches thick with correspondence and medical records submitted prior to the claim being litigated at the OALJs," as well as the quality of counsel's representation, *i.e.*, claimant's counsel "prepared a detailed summary of the claim and the medical treatment" which is "indicative of the high quality of his representation." Compensation Order at 2. In rejecting employer's other objections, the district director found it reasonable for claimant's counsel to have spent some additional time in familiarizing himself in Longshore law, and she furthermore found that all of the other "time entries specifically objected to by the employer/carrier were adequately described in the fee application," *id.*, and as such, were similarly reasonable.

Accordingly, the administrative law judge's Decision and Order and Order Granting Attorney's Fees, and the district director's Compensation Order Approval of Attorney Fee and Compensation Order Denial of Request for Reconsideration, are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge