

KENNETH COSTON)
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 Claimant-Petitioner)
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 v.)
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 DELAWARE RIVER STEVEDORES) DATE ISSUED: 12/28/2005
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 and)
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 LIBERTY MUTUAL INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Attorney Fees Order of Emma Riley, District Director, United States Department of Labor.

Brian R. Steiner (Steiner, Segal, Muller & Donan), Philadelphia, Pennsylvania, for claimant.

John E. Kawczynski (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Attorney Fees Order (Case No. 03-28101) of District Director Emma Riley 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 injured his left knee and leg at work on November 6, 2001. Initially, employer paid claimant temporary total disability benefits but stopped payments in February 2004 when Dr. Nappi, claimant's treating doctor, indicated that his impairment was permanent. In September 2004, Dr. Nappi opined that claimant had a 22 percent permanent impairment to the left leg. Employer paid claimant a lump sum of \$59,266.31 for permanent partial disability in October 2004.

Thereafter, claimant's counsel requested a fee before the district director of \$5,000 for 7.8 hours of attorney services. Claimant's counsel did not specify an hourly rate in the fee petition. Employer objected, asserting that the fee was essentially based on an hourly rate of \$641.03, and that an hourly rate of \$225 was appropriate. Claimant's counsel responded that his \$5,000 fee is reasonable and appropriate given his expertise, the time spent on the case, and the additional \$59,000 claimant secured as a result of his work. The district director awarded a fee of \$1,950, representing 7.8 hours of attorney services at \$250 per hour, payable by employer.

On appeal, claimant's counsel argues that the district director erred in awarding a fee of \$1,950 without considering the degree of success obtained by counsel in the amount of \$59,000.¹ Employer responds that the fee award is reasonable.

We affirm the district director's fee award. The district director rationally divided counsel's fee by the number of hours to arrive at an effective hourly rate of \$641.03 since counsel did not provide his normal billing rate in his fee request as required by the regulations. 20 C.F.R. §702.132(a). Upon consideration of employer's objection the district director acted within her discretion in setting the hourly rate at \$250. *See generally Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004). Counsel's argument that the district director did not account for the \$59,000 recovery

¹ We reject claimant's contention that the fee he requested is reasonable as it represents only 6.75 percent of the award of benefits. An attorney's fee under the Act is not based on any fixed percentage of the compensation award. *See Enright v. St. Louis Ship*, 13 BRBS 573 (1981). Rather, the regulation at 20 C.F.R. §702.132(a) provides in relevant part that,

The [fee] 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 . . . of each person performing such work, *the normal billing rate of each such person*, and *the hours devoted by each such person to each category of work*. . . .

20 C.F.R. §702.132(a)(emphasis added).

obtained for claimant lacks merit. The district director stated she took into consideration the administrative file which would include all work performed before her office including claimant's recovery of permanent partial disability benefits pursuant to the schedule at Section 8(c)(2). *See Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *Finnegan v. Director, OWCP*, 69 F.3d 1039, 29 BRBS 121(CRT) (9th Cir. 1995); 20 C.F.R. §702.132(a). As claimant has not shown that the fee awarded is not reasonably commensurate with the necessary work performed or is arbitrary, capricious, or an abuse of discretion, we affirm the district director's fee award.

Accordingly, the district director's Attorney Fees Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge