

LAWRENCE A. LEE)
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 Claimant-Respondent)
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 v.)
)
 NEWPORT NEWS SHIPBUILDING AND) DATE ISSUED: 12/14/2006
 DRY DOCK COMPANY)
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Attorney's Fee Order on Remand of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden L.L.P.), Norfolk, Virginia, for claimant.

Jonathan H. Walker (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Employer appeals the Attorney's Fee Order on Remand (2003-LHC-0331) of Administrative Law Judge Richard E. Huddleston 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 Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980). This is the second time this case is before the Board.

Claimant, a machinist, suffered a groin injury on September 25, 2002, and sought temporary total disability benefits for the period from October 3 to November 18, 2002. After the claim was referred to the Office of Administrative Law Judges, employer accepted claimant's claim on November 25, 2002, and sent proposed stipulations for

claimant's agreement. Claimant's counsel modified the stipulations and returned them to employer on December 23, 2002. CX 3. Because the parties could not reach an agreement on the proposed modifications, CXs 9-11, a formal hearing was held on July 29, 2003, at which time the parties submitted stipulations and requested the entry of an order. Administrative Law Judge Fletcher Campbell issued an order on July 31, 2003, awarding claimant temporary total disability benefits from October 3 to November 18, 2002, inclusive, based on the parties' stipulations. Their agreement provided for the same compensation to which employer had agreed on November 25, 2002, but did not contain the disputed stipulation.

Subsequently, claimant's attorney filed a fee petition, seeking a fee of \$2,844.50. Judge Campbell disallowed all time requested for work performed prior to November 6, 2002, the date upon which the case was transferred to the Office of Administrative Law Judges, and after November 25, 2002, the date of employer's offer to pay benefits. After reducing the requested hourly rate from \$225 to \$185 per hour and disallowing the requested expenses, Judge Campbell awarded claimant an attorney's fee of \$46.25 for legal services performed on November 18, 2002.

Claimant appealed to the Board. In its Decision and Order, *Lee v. Newport News Shipbuilding & Dry Dock Co.*, BRB No. 04-0485 (Feb. 24, 2005) (unpub), the Board vacated Judge Campbell's fee award, holding that employer's supposed tender of compensation was not unconditional pursuant to Section 28(b), 33 U.S.C. §928(b). As employer neither paid nor tendered compensation and as claimant obtained an award of temporary total disability benefits, the Board held that employer is liable for an attorney's fee. *See Jackson v. Newport News Shipbuilding & Dry Dock Co.*, 38 BRBS 39 (2004). The Board remanded the case for reconsideration of the amount of the attorney's fee for which employer is liable. On remand, the case was assigned to Judge Huddleston (hereinafter the administrative law judge) due to Judge Campbell's retirement.

On remand, the administrative law judge addressed employer's objections to counsel's hourly rate, the specificity of the fee petition and to specific entries. The administrative law judge reduced the hours requested by 2.15 for specified entries he found duplicative or unnecessary. He awarded counsel a fee of \$2,360.75, representing 9.71 hours of attorney services at \$225 per hour, two hours of paralegal services at \$80 per hour, and \$16 in expenses.

Employer appeals, arguing that the administrative law judge erred in not considering the extent of claimant's success in entering a fee award and in disregarding the Board's prior decision that affirmed an hourly rate of \$185 and denial of the

requested costs.¹ Claimant responds, urging affirmance of the administrative law judge's decision.

We first address employer's argument that the administrative law judge erred in awarding an hourly fee of \$225 for attorney services, as well as costs, as the Board affirmed an hourly rate of \$185 and the denial of costs because claimant had not appealed these findings. *Lee*, slip op. at 3 n.4. We reject employer's contention that this constrained the administrative law judge on remand from awarding a higher hourly rate. In its decision, the Board also instructed the administrative law judge to reconsider counsel's fee petition as a whole along with employer's objections to it to determine the amount of the attorney's fee for which employer is liable. *Id.* at 4. In the original fee award, Judge Campbell had reduced the hourly rate to \$185 based upon the lack of complexity of the one service he found compensable, *i.e.*, the review of a single letter on November 18, 2002. On remand, however, the administrative law judge addressed employer's objection to the requested hourly rate, and considered all of the services performed, the usual rate awarded to attorneys in counsel's geographic area, claimant's success, and counsel's expertise in finding that the requested hourly rate of \$225 was appropriate. In view of the fact that the administrative law judge was to address the compensability of all attorney services performed on remand, the administrative law judge did not abuse his discretion in addressing the hourly rate, and the award based on an hourly rate of \$225 is affirmed. *See generally Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004).

We next address employer's contention that the administrative law judge failed to consider the extent of claimant's success in awarding the fee. The amount of benefits obtained is a proper consideration in determining the amount of an attorney's fee under the Act. *See Farrar v. Hobby*, 500 U.S. 103 (1992); *Hensley v. Eckerhart*, 461 U.S. 424 (1983); 20 C.F.R. §702.132. In the instant case, claimant was fully successful on all issues of contention between the parties, receiving both the temporary total disability compensation claimed and eliminating the objectionable stipulation. Therefore, employer has not established an abuse of discretion in the administrative law judge's award of a fee of \$2,360.75.

Finally, claimant's attorney has filed a fee petition for work performed before the Board in this appeal, requesting a fee of \$802.50. By letter filed September 28, 2006, the parties agreed to an attorney's fee in the amount of \$637.50. We find this fee to be reasonable. As counsel successfully defended the fee award against employer's appeal,

¹ To the extent that employer disagrees with the Board's prior decision regarding its liability for claimant's attorney's fee, the Board's decision constitutes the law of the case. *See Jones v. U.S. Steel Corp.*, 25 BRBS 355 (1992).

we grant counsel an attorney's fee of \$637.50. *See generally Lewis v. Todd Shipyards Corp.*, 30 BRBS 154 (1996); *Smith v. Alter Barge Line, Inc.*, 30 BRBS 87 (1996); 33 U.S.C. §928; 20 C.F.R. §802.203.

Accordingly, the administrative law judge's Attorney's Fee Order on Remand is affirmed. Claimant's counsel is awarded an attorney's fee of \$637.50, payable directly to counsel by employer.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge