

DAVID J. GUTHRIE)
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 Claimant-Petitioner)
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 v.)
)
 STEVEDORING SERVICES OF AMERICA)
)
 and)
)
 HOMEPORT INSURANCE COMPANY) DATE ISSUED: 12/23/2009
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 Employer/Carrier-)
 Respondents)
)
 MARINE TERMINALS CORPORATION)
)
 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION)
)
 Employer/Carrier-) ORDER on
 Respondents) RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board's Decision and Order in *D.G. [Guthrie] v. Stevedoring Services of America*, BRB No. 08-0843 (Jul. 28, 2009) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. In its decision, the Board affirmed the administrative law judge's finding on modification that Stevedoring Services of America (SSA) is the employer responsible for claimant's permanent total disability benefits. The Board also addressed SSA's appeal of the administrative law judge's finding that claimant's compensation rate is \$890.03 per week beginning on November 22, 2005, the date on which the administrative law judge found that claimant's disability changed from permanent partial to permanent total. The Board stated that, as claimant was neither newly awarded compensation nor currently receiving compensation for permanent total disability when a new maximum rate became applicable in October 2005, the statutory maximum rate in effect when he was first awarded compensation in 1997 of \$801.06 remained applicable. *Guthrie*, slip op. at 6-7, citing *Estate of C. H. [Heavin] v.*

Chevron USA, Inc., 43 BRBS 9 (2009); *Reposky v. Int'l Transp. Services*, 40 BRBS 65 (2006). The Board held that, as of October 1, 2006, claimant's compensation became subject to the new statutory maximum rate of \$1,114.44, since on that date he was "currently receiving" compensation for permanent total disability. See 33 U.S.C. §906(c). Because this rate is higher than claimant's full compensation rate of \$890.03, the Board stated that claimant is entitled to his full weekly rate of \$890.03 beginning on October 1, 2006. Accordingly, the Board modified the administrative law judge's decision to provide that claimant is to receive compensation for permanent total disability of \$801.06 per week from November 22, 2005, to September 30, 2006, and his full compensation rate of \$890.03 as of October 1, 2006, subject thereafter to Section 10(f) adjustments, 33 U.S.C. §910(f).

In his motion for reconsideration, claimant argues that he is entitled to his maximum compensation rate of \$890.03 per week as of the date permanent total disability benefits commenced on November 22, 2005. Claimant argues that, under Section 6(c), 33 U.S.C. §906(c), he is entitled to compensation limited by the statutory maximum rate of \$966.08, the rate in effect when he was first awarded compensation in the administrative law judge's initial decision on May 6, 2002. The contention concerning the applicable maximum compensation rate was fully considered by the Board in this and other cases, and claimant has failed to make any persuasive argument that the determination in this case is in error. See *Guthrie*, slip op. at 6-7; *J.T. [Tracy] v. Global Int'l Offshore, Ltd.*, 43 BRBS 92 (2009); *Heavin*, 43 BRBS 9; *Reposky*, 40 BRBS 65. Therefore, we deny claimant's motion for reconsideration and affirm the Board's decision.

Claimant's counsel has filed a fee petition for time expended before the Board in which he requests a fee of \$6,200 for 15.5 hours of attorney services at an hourly rate of \$400. Employer filed objections to the hourly rate requested, contending that a reasonable rate in the Portland, Oregon area is in the range of \$275 to \$300 per hour. Claimant is entitled to an attorney's fee payable by employer for successfully opposing employer's appeal. See *Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992); 20 C.F.R. §802.203(a). Claimant's fee petition states that services were rendered from January 18, 2009, to August 24, 2009, while the case was pending before the Board. For the reasons stated in *Christensen v. Stevedoring Services of America*, ___ BRBS ___, BRB No. 03-0302 (Nov. 18, 2009), claimant's counsel is entitled to a fee based on an hourly rate of \$338. We disallow the 2.5 hours claimed for claimant's motion for reconsideration as the motion was unsuccessful. See generally *Hensley v. Eckerhart*, 461 U.S. 424 (1983). Employer has not objected to the remaining hours requested by claimant's counsel and they are reasonably commensurate with the necessary work performed before the Board. We, therefore, grant counsel a fee of \$4,394, representing 13 hours of attorney services at

\$338 per hour, payable directly to counsel by employer. 33 U.S.C. §928; 20 C.F.R. §802.203.

Accordingly, claimant's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's decision is affirmed. Claimant's counsel is awarded a fee of \$4,394 for work performed before the Board payable directly to counsel by employer.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge