

FRANCIS L. HOLMES)
)
 Claimant-Petitioner)
)
 v.)
)
 NORFOLK SHIPBUILDING AND) DATE ISSUED: _____
 DRY DOCK CORPORATION)
)
 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna, Klein & Camden L.L.P.), Norfolk, Virginia, for claimant.

Robert A. Rapaport (Clarke, Dolph, Rapaport, Hardy & Hull, P.L.C.), Norfolk, Virginia, for self-insured employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (98-LHC-0378) of Administrative Law Judge Fletcher E. Campbell, Jr., 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 Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sought benefits under the Act for work-related, bilateral carpal tunnel syndrome. The case was transferred to the Office of Administrative Law Judges on November 17, 1997. Before a formal hearing was held, however, the parties agreed to dispose of the claim by way of stipulations; thus, on July 22, 1998, the administrative law judge remanded the case to the district director. On January 13, 1999, the district director issued a Compensation Order, based on the parties' stipulations, awarding claimant temporary total and temporary partial disability benefits for various periods, and permanent partial disability benefits for a five percent loss of use of each upper extremity. 33 U.S.C. §908(c)(1), (b), (e). The district director credited

employer with the \$34,784.61 it had already paid to claimant of the \$37,784.49 awarded, and therefore ordered employer to pay claimant \$2,999.88, and to continue to pay claimant medical benefits under Section 7 of the Act, 33 U.S.C. §907. In a Compensation Order issued on July 26, 1999, the district director approved the parties' settlement agreement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i). Employer paid claimant an additional \$8,500 in settlement of claimant's claim for disability and medical benefits. Claimant's attorney received a fee of \$1,000 as a result of this settlement agreement.

Claimant's counsel subsequently filed a fee petition for work performed before the administrative law judge, requesting a fee of \$2,124.50, plus costs of \$49.¹ In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge reduced the hourly rate sought by claimant's counsel to \$165 per hour, reduced the paralegal hourly rate to \$55 an hour, and reduced the attorney time requested by one hour. The administrative law judge thus awarded claimant's counsel a fee of \$1,630.25, representing 8.25 hours of attorney services, four hours of paralegal services, and \$49 for expenses.

Claimant's sole contention on appeal is that the administrative law judge erred in reducing the attorney hourly rate from \$200 to \$165 per hour. Employer responds, urging affirmance.

The administrative law judge found that considering the degree of skill with which claimant was represented, the amount of time involved, the risk of loss, and "other relevant factors," an hourly attorney rate of \$165 is reasonable. *See* 20 C.F.R. §702.132. After consideration of claimant's contentions on appeal, we affirm the hourly rate awarded to counsel by the administrative law judge, as claimant has not shown that the administrative law judge abused his discretion in this regard. *See generally Finnegan v. Director, OWCP*, 69 F.3d 1039, 29 BRBS 121(CRT) (9th Cir. 1995); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000); *Parks v. Newport New Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.*, 202 F.3d 259 (4th Cir. 1999) (table). That employer did not object to the hourly rate requested does not require the administrative law judge to award the rate requested, if, in view of relevant factors, he reasonably determines a lower hourly rate is warranted. Similarly, the award of an hourly rate of \$200 in other cases does not bind the administrative law judge in the instant case. *See* 33 U.S.C. §928. Consequently, we affirm

¹This represents .25 hour of paralegal services at \$63 per hour, 3.75 hours of paralegal services at \$75 per hour, .75 hour of attorney services at \$170 per hour, and 8.5 hours of attorney services at \$200 per hour.

the administrative law judge's award of an attorney's fee.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge