

W.H.)	
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Claimant-Respondent)	
)	
v.)	
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NORTHROP GRUMMAN SHIP SYSTEMS, INCORPORATED)	DATE ISSUED: 02/10/2009
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fee of David A. Duhon, District Director, United States Department of Labor.

Sue Esther Dulin (Dulin & Dulin, Ltd.), Gulfport, Mississippi, for claimant.

Donald P. Moore (Franke & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney's Fee (Case Nos. 07-170420, 07-174254) of District Director David A. Duhon 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. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, a pipefitter, suffered injuries to his lower back on August 22, 2003 and February 24, 2005. Following the first injury, claimant underwent a lumbar laminectomy at L5-S1 on June 24, 2004, and returned to work with restrictions on October 10, 2004.

As a result of the second injury, claimant underwent a revision discectomy on June 6, 2006. Claimant retired in August 2007.

The issues before the administrative law judge included, *inter alia*, the nature and extent of claimant's disability, his average weekly wage at the time of each injury, and whether claimant's job following his second injury constituted sheltered employment. In his Decision and Order, the administrative law judge found claimant entitled to compensation for temporary total disability from March 2, 2005 to April 25, 2006, 33 U.S.C. §908(b), based on an average weekly wage of \$1,187.75, and to compensation for permanent partial disability from April 26, 2006 to July 23, 2006, and July 26, 2006 to October 8, 2006, 33 U.S.C. §908(c)(21), based on an average weekly wage of \$1,187.75 and a residual wage-earning capacity of \$270 per week.¹

Subsequently, claimant's attorney submitted fee petitions for services rendered before the administrative law judge and district director.² The fee requested before the district director was \$8,591.10, representing 47.125 hours at \$200 per hour, plus expenses of \$166.10. Employer responded that claimant's fee should be reduced based on his limited success on the issues presented to the administrative law judge and that certain specific items should be reduced or eliminated based on inappropriate use of one-quarter

¹ The administrative law judge rejected claimant's contentions that his work following his second injury constituted sheltered employment and found his return to work on October 9, 2006, was to an appropriate position earning higher wages than he had before his second injury. Decision and Order at 10. While claimant had argued that his average weekly wage was \$916 prior to his first injury and \$1,075 prior to his second, the administrative law judge determined claimant's average weekly wages to be \$840.40 and \$1187.75 respectively. Decision and Order at 11. The administrative law judge denied employer relief under Section 8(f), 33 U.S.C. §908(f), as employer was liable for permanent partial disability benefits only from April to October 2006, which is fewer than 104 weeks. Decision and Order at 14.

² Claimant's attorney requested a fee of \$23,353.21 for work performed before the administrative law judge, representing 114.25 hours at \$200 per hour plus expenses of \$503.21. The administrative law judge held employer liable for a fee of \$7,833.84, and expenses of \$503.21. The administrative law judge agreed with employer that its offer to settle this claim for \$30,000 on October 2, 2007, exceeded claimant's ultimate award of \$24,000 and that, therefore, claimant's attorney was not entitled to recover for services rendered after this date; accordingly, he disallowed 34.75 hours of services. He further reduced the requested hourly rate to \$185 and the amount of the fee by 50 percent based on claimant's limited success. The administrative law judge's fee award has not been appealed.

hour billing increments or as being excessive. In his Compensation Order Award of Attorney's Fee, the district director awarded claimant's counsel a fee of \$8,391, representing 41.125 hours at \$200 per hour plus \$166.10 in costs, payable by employer.

Employer appeals the district director's award of an attorney's fee. Employer contends the district director erred in not reducing the fee based on claimant's limited success before the administrative law judge and in awarding an hourly rate that is excessive in light of the lack of complexity of the issues. Further, employer contends the district director erred in failing to disallow charges for clerical work. Claimant responds, urging affirmance of the district director's fee award. Employer has filed a reply to claimant's response.

In addressing employer's contention that the fee should be reduced to reflect claimant's limited success before the administrative law judge,³ the district director stated that the services rendered before his office pertained primarily to the average weekly wage issue on which claimant was successful. Thus, he declined to award a reduced fee. We reject employer's contention that the district director erred in this regard. In *Hensley v. Eckerhart*, 461 U.S. 421 (1983), a plurality of the Supreme Court defined the conditions under which a plaintiff who prevails on only some of his claims may recover fees. Where claims involve a common core of facts or are based on related legal theories, the Court stated that the focus should be on the significance of the relief obtained by the plaintiff. The adjudicator is afforded wide discretion in determining the amount of an appropriate fee in view of the degree of success. *See Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001); *see also Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993). The district director did not abuse his discretion in rejecting employer's contention that the fee request is excessive in view of the results obtained given the nature of the services performed before his office and claimant's success on the average weekly wage issue.

Employer also contends the hourly rate awarded, \$200, is unwarranted in view of the lack of complex issues. We reject this contention. The district director rationally found the rate requested to be reasonable and customary in the geographic region for a case of this type. *See generally Jeffboat, LLC v. Director, OWCP*, ___ F.3d ___, 2009 WL 66961 (7th Cir. Jan. 13, 2009); *B&G Mining, Inc., v. Director, OWCP*, 522 F.3d 657, 42 BRBS 25(CRT) (6th Cir. 2008); 20 C.F.R. §702.132(a). We, therefore, affirm the hourly rate.

³ Claimant was unsuccessful in obtaining permanent total disability benefits. By virtue of the administrative law judge's finding that claimant's average weekly wage was higher than that paid by employer, claimant obtained an additional \$24,000 in benefits.

Employer further avers that the district director erred in failing to disallow certain attorney services for work it contends is clerical in nature. Time spent by attorneys on traditional clerical duties is not compensable. *Staffile v. Int'l Terminal Operating Co., Inc.*, 12 BRBS 895 (1980). The district director reviewed counsel's fee petition and found that counsel's letters to medical providers are not clerical in nature, but he disallowed some of the time requested as duplicative. The district director specifically addressed employer's objection and is the better position to assess the nature of the work performed. Employer has not established that the district director abused his discretion in declining to further reduce the fee for the services in question. *Zeigler Coal Co. v. Director, OWCP*, 326 F.3d 894 (7th Cir. 2003). Therefore, we reject employer's contention.

Accordingly, the district director's Compensation Order – Award of Attorney's Fee is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge