

BRB No. 13-0343

JABIR BAHIZ AL-MALIKI)
(Father of AHMED JABIR BAHIZ AL-)
MALIKI, deceased))
)
Claimant-Respondent)
)
v.)
)
SALLYPORT GLOBAL SERVICES) DATE ISSUED: Feb. 18, 2014
)
and)
)
CONTINENTAL CASUAL COMPANY)
)
Employer/Carrier-)
Petitioners) DECISION and ORDER

Appeal of the Supplemental Decision and Order of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Agnieszka M. Fryszman and Thomas N. Saunders (Cohen Milstein Sellers & Toll PLLC), Washington, D.C., for claimant.

Gregory Sujack (Law Offices of Edward J. Kozel), Chicago, Illinois, for employer/carrier.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Award of Attorney's Fees (2010-LDA-00001) of Administrative Law Judge Daniel F. Solomon 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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).

Ahmed Jabir Bahiz Al-Maliki (decedent), along with eight of his co-workers, died on October 29, 2006, while in the course of his work as a translator for employer in Iraq. Based on employer's representations, the district director found, pursuant to Section 9 of the Act, 33 U.S.C. §909, that decedent's mother was a survivor eligible for death benefits. The district director issued an Order on September 3, 2009, for employer to pay death benefits to decedent's mother. Employer complied with the district director's Order and subsequently applied for and received reimbursement under the War Hazards Compensation Act, 42 U.S.C. §1701 *et seq.* In December 2009, decedent's father, Jabir Bahiz Al-Maliki, claimant herein, filed a claim for death benefits as an eligible survivor. 33 U.S.C. §909(d).

By Order dated May 12, 2011, the administrative law judge, *inter alia*: 1) denied employer's motion for summary decision; 2) granted partial summary decision for claimant, establishing the timeliness of the claim and claimant's status as decedent's dependent entitled to compensation under the Act; and 3) referred claimant's Section 31(c), 33 U.S.C. §931(c), claim to the district director for further investigation. *See* Order Granting Partial Summary Decision at 11. After employer withdrew its controversion of the claim, *see* 20 C.F.R. §702.351, the parties stipulated to decedent's average weekly wage, and the administrative law judge canceled the formal hearing and remanded the case to the district director. The administrative law judge retained jurisdiction to entertain a petition for attorney's fees.

Claimant's counsel filed a petition for an attorney's fee and costs of \$48,387.23, representing approximately 155 hours of work at hourly rates varying from \$140 to \$435, plus costs of \$6,696.83. Employer requested several extensions of time in order to file objections but did not submit a response to the fee petition. After reducing the \$140 hourly rate to \$100 and denying itemized entries found to be clerical, the administrative law judge awarded claimant's counsel an attorney's fee and costs of \$45,805.03.

In the interim between the filing of the fee petition with the administrative law judge and the issuance of the administrative law judge's fee award, the parties engaged in negotiations to settle the claim for death benefits and commutation thereof, and jointly submitted an Application For Approval of Settlement Under 33 U.S.C. §908(i), to the district director for consideration on or around December 13, 2012. Under the proposed agreement, claimant would receive a lump sum payment of \$22,940.04 and claimant's counsel would receive a fee of \$29,098.65. The parties requested that the fee petition pending before the administrative law judge be dismissed as moot. Three months after the agreement was submitted, and after the administrative law judge had issued his fee award, the district director disapproved the settlement agreement because the parties had failed to provide claimant with a translated version of the settlement agreement or to obtain claimant's signature. *See* 20 C.F.R. §§702.242-702.243.

On appeal, employer challenges the administrative law judge's award of an attorney's fee. Claimant responds, urging affirmance of the attorney's fee award. Employer has filed a reply brief. The issues employer raises on appeal are the same as those raised and addressed by the Board in *Khudhaier v. Sallyport Global Services*, BRB No. 13-0342 (Feb. 7, 2014). For the reasons stated therein, we vacate the administrative law judge's award of an attorney's fee and remand the case for further proceedings consistent with *Khudhaier*.

Accordingly, the administrative law judge's Supplemental Decision and Order Award of Attorney's Fee is vacated, and the case is remanded for further action consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge