

BRB No. 13-0350

FADHILA SALMAN SHAMKHI)
(Mother of MOYAD SUBRY SHRAIDA,)
Deceased))
)
Claimant-Respondent)
)
v.)
)
SALLYPORT GLOBAL SERVICES) DATE ISSUED: Feb. 28, 2014
)
and)
)
CONTINENTAL CASUALTY COMPANY)
)
Employer/Carrier-)
Petitioners) DECISION and ORDER

Appeal of the Supplemental Decision and Order Award of Attorney's Fee 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 Fee (2011-LDA-00004) 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. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Moyad Subry Shraida (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. Employer, through its carrier, conducted an investigation into potential survivors who might be entitled to compensation under the Act. Based on employer's representations, the district director found, pursuant to Section 9 of the Act, 33 U.S.C. §909, that decedent did not leave any eligible survivors.¹ However, investigations had discovered decedent's mother (claimant) to be decedent's dependent and despite assurances from the investigator, no compensation had been paid as of 2009, prompting claimant to file a claim for death benefits.

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. Order Granting Partial Summary Decision at 11-12. After employer withdrew its controversion of the claim, *see* 20 C.F.R. §702.531, 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 fees.

On October 19, 2011, claimant's counsel filed with the administrative law judge a petition seeking an attorney's fee of \$41,272.20, representing 151 hours of work at hourly rates ranging from \$140 to \$435, plus costs of \$7,113.57. 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 4.71 hours of itemized entries found to be clerical, in an Order dated March 15, 2013, the administrative law judge awarded claimant's counsel an attorney's fee, payable by employer, of \$38,784.80, plus \$7,113.57 in expenses, for work performed before him in this case.

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

¹ The district director issued an Order on February 15, 2008, for employer to pay funeral expenses and \$5,000 into the Special Fund pursuant to Section 44(c)(1) of the Act, 33 U.S.C. §944(c)(1). 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.*

negotiations to settle the claim for death benefits, commutation thereof, *see* 33 U.S.C. §§908(i), 909(g), and claimant's counsel's attorney fee, 33 U.S.C. §928(a). The parties ultimately reached an agreement and submitted an application for approval of a Section 8(i) settlement to the district director. Under the proposed agreement, decedent's mother was to receive a lump sum payment of \$10,286.01, and her attorneys would receive a fee of \$29,098.66. 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