

BRB No. 02-0346

JOSEPH K. SAMUEL)
)
 Claimant-Petitioner)
)
 5.)
)
 LAKE UNION DRY DOCK) DATE ISSUED: Jan. 21, 2003
)
 and)
)
 LIBERTY NORTHWEST)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Compensation Order Approval of Attorney Fee of Karen P. Staats, District Director, United States Department of Labor.

William D. Hochberg and Nicole A. Hanousek, Edmonds, Washington, for claimant.

Marshall L. Ferguson (Metz & Associates, P.S.), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Compensation Order Approval of Attorney Fee (Case No. 14-124792) of District Director Karen P. Staats 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).

This case is before the Board for the second time. To reiterate, on December 1, 1997, claimant filed a claim for benefits, alleging that he sustained a binaural work-related hearing loss. The case was referred to the Office of Administrative Law Judges on April 4,

2000. The parties subsequently entered into a settlement agreement under Section 8(i) of the Act, 33 U.S.C. '908(i), which was approved by the administrative law judge. Claimant obtained \$3,200 as a result of the settlement.

Thereafter, claimant=s counsel submitted a fee petition to the district director requesting a fee of \$4,232.09 for 14.5 hours of attorney services at rates of \$200, \$140 and \$125 per hour, and 16.5 hours of legal assistant services at rates of \$100, \$90 and \$70 per hour, plus costs of \$317.59. Employer filed objections. Claimant=s counsel requested a fee for an additional two hours of attorney services at an hourly rate of \$145, and .5 hour at an hourly rate of \$200, for defending the fee petition.

The district director awarded claimant=s counsel an attorney=s fee totaling \$2,651.50, plus costs of \$317.59. The district director reduced the hours for all attorney time by 50 percent, based on her finding that the case was neither novel nor complex, and that the claim was not handled in an efficient manner. The district director also found that claimant initially sought an award of \$5,822 for his binaural hearing loss, but accepted a settlement of \$3,200. Additionally, the district director reduced the hourly rate of the lead attorney from \$200 to \$175, because the case was not complex. She found, however, that the hourly rates charged for the services of the other attorneys and legal assistants were reasonable. Finally, the district director reduced the request for defending the fee petition to one hour at \$175 per hour. On claimant=s motion for reconsideration, the district director affirmed her findings.

On claimant=s appeal, the Board held that the district director acted within her discretion by reducing the fee because the case was not complex and because claimant settled for an amount less than that which he originally sought. *Samuel v. Lake Union Dry Dock*, BRB No. 01-0360 (Dec. 19, 2001). The Board affirmed the district director=s reduction in the hourly rate of lead counsel from \$200 to \$175, based on the lack of complexity of the case. *Id.*, slip op. at 3. Moreover, the Board affirmed the district director=s finding that claimant=s counsel did not handle the claim efficiently, as she is in the best position to make this determination. *Id.* The Board, however, remanded the case to the district director for further findings regarding the reduction in the number of hours requested for attorney services. Specifically, the Board stated:

Nonetheless, inefficiency in handling the claim does not necessarily require a finding that counsel=s fee request should be reduced if the inefficiency did not result in Aoverbilling. @ If the fee petition reflects necessary services that had to be performed, whenever they were performed, then counsel need not be penalized for his inefficiency. If, however, due to counsel=s handling of the claim, services were performed that would not have been necessary had the claim been more expeditiously handled, then the district director may properly reduce those services she finds unnecessary.

Id.

On remand, the district director reduced the attorney=s fee award to \$2,389, plus costs of \$317.59, based on a finding that the inefficiency of claimant=s counsel caused the performance of unnecessary and excessive legal services in that the case took longer to settle than should have been required. Thus, the district director reduced many of the itemized services and, in addition, disallowed a fee for all services performed between February 6, 1999 and January 24, 2000. On appeal, claimant challenges the district director=s fee award as arbitrary, capricious, and an abuse of her discretion. Employer responds, urging affirmance.

We agree with claimant that the district director abused her discretion in reducing the time counsel spent pursuing a medical report from Dr. Chan. Order at 1-2. If the doctor refused to cooperate by preparing the necessary report to accompany the audiogram, counsel can hardly be faulted for repeatedly seeking the doctor=s cooperation. Thus, although this lack of cooperation resulted in the claim=s being handled inefficiently, it does not demonstrate that counsel performed unnecessary services. To the contrary, counsel continued to pursue the report from Dr. Chan in order to best represent his client. Thus, we modify the district director=s fee award to allow counsel an additional .7 hours of attorney time at \$125 per hour, and 1.1 hours of legal assistant time at \$70 per hour.

In addition, we cannot affirm the district director=s disallowance of time spent on February 15, 1999. Counsel=s correspondence with carrier, dated February 15, 1999, requesting that carrier not contact claimant directly and stating that he will not sign a blanket release for all of claimant=s medical conditions clearly was a reasonable and necessary service. Thus, we modify the district director=s order to allow an additional .2 hours at \$140 per hour.

We have reviewed counsel=s contentions regarding the remaining reductions made by the district director, and we cannot say that counsel has established that the district director abused her discretion in reducing the requested fee. The district director is in the best position to verify the posture of this case at various points in time, and she reasonably found that the case was unnecessarily protracted. As the district director has provided a valid rationale for the reduction in the attorney=s fee requested, and as counsel has not demonstrated reversible error in the district director=s remaining reductions, the fee award is affirmed, as amended herein. See generally *Finnegan v. Director, OWCP*, 69 F.3d 1039, 29 BRBS 121(CRT) (9th Cir. 1995); see also *Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Accordingly, the district director's fee award is modified to allow an additional fee of \$192.50 as stated herein, and is otherwise affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge