

BRB No. 11-0364

ESTATE OF ROBERTA A. STRAMIELLO)
(Widow of ANTHONY STRAMIELLO, JR.))
)
Claimant-Petitioner)
)
v.)
)
SERVICE EMPLOYEES) DATE ISSUED: 01/10/2012
INTERNATIONAL, INCORPORATED)
)
and)
)
INSURANCE COMPANY OF THE STATE)
OF PENNSYLVANIA)
)
Employer/Carrier-)
Respondents) DECISION and ORDER

Appeal of the Order on Attorney's Fees of Karen P. Staats, District Director, United States Department of Labor.

Charles Robinowitz, Portland, Oregon, for claimant.

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

PER CURIAM:

Claimant appeals the Order on Attorney's Fees (No. 02-139366) 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.*, 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. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant is the estate of Roberta Stramiello, the now-deceased widow of Anthony Stramiello, the deceased employee, who was killed on December 21, 2004, in the course of his employment with employer in Iraq. The deceased employee's widow filed a claim seeking death benefits and funeral expenses under the Act. The administrative law judge approved the parties' stipulations regarding claimant's entitlement to benefits in a Decision and Order issued on March 19, 2008. Claimant's attorney subsequently filed a fee petition with the district director seeking a fee for work performed before her.¹

In her initial Order on Attorney's Fees dated July 9, 2008, the district director awarded claimant's attorney a fee of \$5,250.00, representing 20.25 hours of attorney services at an hourly rate of \$240 and 3.25 hours of legal assistant services at an hourly rate of \$120.

Claimant appealed the fee award contending that the district director erred in reducing the requested hourly rate for attorney services from \$375 to \$240 per hour. BRB No. 08-0776. For the reasons stated in *Christensen v. Stevedoring Services of America*, 557 F.3d 1049, 43 BRBS 6(CRT) (9th Cir. 2009), and *Van Skike v. Director, OWCP*, 557 F.3d 1041, 43 BRBS 11(CRT) (9th Cir. 2009), the Board vacated the district director's hourly rate determination for attorney services and remanded the case for her to determine a reasonable hourly rate consistent with these decisions. *Estate of R.S. [Stramiello] v. Service Employees International, Inc.*, BRB Nos. 08-0696, 08-0776, slip op. at 3 (Apr. 29, 2009) (unpub.).

In her order on remand dated December 30, 2010, the district director adopted the hourly rates awarded by the Board to claimant's counsel for his services rendered from 2007 to 2010 in the *Christensen* case which were: 2007 - \$357.50; 2008 - \$370; 2009 - \$384; and, 2010 - \$392. Order at 2-3; see *Christensen v. Stevedoring Services of America*, 44 BRBS 39, 40 (2010), *modifying in part on recon.* 43 BRBS 145 (2009),

¹Claimant's counsel requested a fee of \$7,702.50, representing 19.5 hours of attorney services at an hourly rate of \$375 and 3.25 hours of legal assistant services at an hourly rate of \$120. Employer responded, objecting to the \$375 hourly rate requested for attorney services. With his reply to employer's objections, claimant's attorney requested an additional fee of \$281.25 for .75 hour of attorney time.

With his fee petition, claimant's counsel submitted his resumé, a copy of the 2006 update of the Morones Survey, and a copy of the affidavit of William B. Crow, an attorney and expert on attorney fees, in support of his requested hourly rate for attorney services. Employer did not submit evidence in support of its position that \$200 to \$225 represented a reasonable hourly rate for claimant's counsel's services in this case.

recon. denied, 44 BRBS 75 (2010), *aff'd mem. sub nom. Stevedoring Services of America, Inc. v. Director, OWCP*, No. 10-73574, 2011 WL 3267679 (9th Cir. Aug. 1, 2011). The district director denied the request that the fee awarded be augmented for the delay in the payment of the attorney's fee. Accordingly, claimant's counsel was awarded a fee of \$8,205.57, representing \$7,771 in attorney fees and \$434.57 in legal assistant fees.²

On appeal, claimant alleges error in the district director's failure to award an attorney's fee that takes into account the delay in payment of a fee for attorney time based on a market rate. Employer has not responded to this appeal.

Where counsel timely raises the issue of the delay between the performance of counsel's services and the payment of his fee, this factor must be considered by the body awarding the fee in determining a reasonable attorney's fee. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *Anderson v. Director, OWCP*, 91 F.3d 1322, 1323-1325, 30 BRBS 67, 68-69(CRT) (9th Cir. 1996); *Allen v. Bludworth Bond Shipyard*, 31 BRBS 95, 96 (1997); *Nelson v. Stevedoring Services of America*, 29 BRBS 90, 96-98 (1995). In this case, the district director's initial attorney fee order was issued on July 9, 2008, for services rendered in 2005, 2006, and 2008. The Board remanded the case to the district director on April 29, 2009. On remand, claimant's counsel requested an augmented fee for time expended to account for the delay in payment at a market rate. The pertinent inquiry is the delay between the date services were rendered and the date the district director's fee order was issued. *B.C. [Christensen] v. Stevedoring Services of America*, 41 BRBS 107, 113 (2007); *Allen*, 31 BRBS at 97. Since the district director's initial fee order was entered in July 2008, the delay in counsel receiving a fee award for services provided in 2006 and 2007 is not so egregious or extraordinary as to require a delay enhancement. *See Christensen*, 557 F.3d at 1056, 43 BRBS at 10(CRT). Moreover, as any further delay in payment was due to the appeals of the fee award, no enhancement for

²The district director's order awarded claimant's counsel a fee for attorney time comprising 13.75 hours in 2005 at \$338 per hour, 2.5 hours in 2006 at \$349 per hour, 3 hours in 2007 at \$357.50 per hour, 2.75 hours in 2008 at \$370 per hour, .75 hours in 2009 at \$384 per hour, .25 of an hour in 2010 at \$392 per hour, and for .5 hours of legal assistant time in 2005 at \$127.80 per hour and 2.75 hours in 2006 at \$134.79. The district director derived the hourly rates for 2005 and 2006 by using the Board's 2007 rate as a base and decreasing that rate for each prior year by subtracting the percentage increase provided in the Federal Locality Pay Tables for the Portland, Oregon area. Order at 3.

the delay in payment is appropriate.³ See *Anderson*, 91 F.3d at 1325 n.3, 30 BRBS at 69 n.3(CRT); see also *Christensen*, 44 BRBS at 40-41.

However, more than two years elapsed between the time services performed in 2005 were provided and the district director issued her order in July 2008. Therefore, we agree with claimant that counsel is entitled to an augmentation of the hourly rate for the 13.75 hours of attorney services provided in 2005, see n.3, *supra*, to account for delay in receiving an order awarding payment for these services. See *Anderson*, 91 F.3d at 1323, 30 BRBS at 68-69(CRT); *Nelson*, 29 BRBS at 97-98. The award of an attorney's fee at a current rate is one method that may be utilized to compensate for delay. See *Anderson*, 91 F.3d at 1325, 30 BRBS at 69(CRT); *Christensen*, 41 BRBS 107; *Allen*, 31 BRBS at 96. In her fee order on remand, the district director determined that \$370 was a reasonable market rate for 2008 by adopting the rates the Board awarded counsel in *Christensen*. Thus, counsel is entitled to the 2005 services at the market rate for 2008. Accordingly, the district director's fee award is modified to reflect an hourly rate of \$370 for the 13.75 hours of attorney services rendered before district director in 2005.

Accordingly, the district director's Order on Attorney's Fees is modified to reflect claimant's counsel's entitlement to an hourly rate of \$370 for all attorney time rendered in 2005. In all other respects, the district director's fee order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

³For this reason, we reject the contention that counsel is entitled to a delay enhancement for services provided in 2009.