BRB No. 98-0810

ROBERT E. LEWIS	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fee and Denial of Motion for Reconsideration of Jeana F. Jackson, District Director, United States Department of Labor.

Scott O. Nelson (Maples and Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Compensation Order Award of Attorney's Fee and Denial of Motion for Reconsideration (Case No. 6-122578) of District Director Jeana F. Jackson 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, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for benefits under the Act on October 28, 1991, based upon his work-related hearing impairment. Employer later accepted liability for the

claim and voluntarily paid benefits on December 14, 1995, prior to any formal adjudication of the claim. Thereafter, claimant's counsel submitted a petition for an attorney's fee for work performed before the district director, requesting a fee totaling $1,204, representing 2.75 hours at $125 per hour and 5.25 hours at $150 per hour, plus expenses of $72.75. In her Compensation Order Award of Attorney's Fee dated December 10, 1997, the district director awarded claimant's counsel a fee totaling $642.50, for 5.875 hours at $100 per hour, and $55 in expenses, of which employer was ordered to pay $367.50, with the remainder of the fee, $275, payable by claimant as a lien upon the compensation award. Relevant to the instant appeal, the district director denied any time for attorney services rendered after the date that employer paid benefits, December 14, 1995, based on her finding that no further benefits were derived from services performed subsequent to that date. Claimant thereafter filed a motion for reconsideration on the ground that the district director erred in denying all fees requested after December 14, 1995, the date on which employer voluntarily paid benefits. The district director summarily denied claimant's motion for reconsideration on February 10, 1998.

On appeal, claimant's counsel challenges the district director's denial of an attorney's fee for services rendered after December 14, 1995. Employer responds, urging affirmance of the fee award.

Claimant's counsel asserts that, contrary to the district director's determination, all entries on the fee petition after December 14, 1995, totaling .875 hours, reflect legal work that was required in order to ensure that this claim was properly wrapped up and, as such, these fees are compensable as reasonable and necessary "wind up" services associated with the claim. Specifically, counsel argues that claimant did not receive authorization to obtain hearing aids from Dr. Wold until February 22, 1996, and therefore, any time spent by counsel on legal work up to that date in order to obtain these medical benefits is compensable. Additionally, counsel argues that entries subsequent to December 14, 1995, involving the forwarding of the compensation payment to claimant, explanation to claimant that employer had not provided the wage records necessary to determine whether the proper amount of benefits had been paid, and counsel's subsequent efforts to procure the requisite records and ensure that the proper amount of compensation had been paid, are all reasonable and necessary to claimant's claim and therefore are compensable as attorney's fees.

The Board has recently addressed the issue presented by claimant's appeal in *Everett v. Ingalls Shipbuilding, Inc.*, BRBS , BRB No. 98-0492 (Dec. 16, 1998). In *Everett*, the Board held that employer may be held liable for reasonable "wind-up" services after it has agreed to pay benefits, such as reading the decision

and calculating the amount of benefits due, if the time requested is considered to be necessary and reasonable. *See Everett,* slip op. at 3; *see also Nelson v. Stevedoring Services of America,* 29 BRBS 90 (1995). For the reasons stated in *Everett,* we hold, in the instant case, that the district director erred in rejecting all time requested for attorney services performed after December 14, 1995, on the ground that no further benefits were derived subsequent to that date, without first considering the necessity and reasonableness of the time requested as it may relate to any services performed to "wind-up" this case. We therefore vacate the district director's denial of an attorney's fee for services performed after December 14, 1995. On remand, the district director must provide an adequate discussion of the time requested and services rendered by claimant's counsel after December 14, 1995, and assess the necessity and reasonableness of the work involved, in order to discern whether these entries represent "wind-up" services for which counsel may be entitled to a fee, payable by employer.

Accordingly, the district director's denial of all attorney's fees after December 14, 1995, is vacated, and the case is remanded to the district director for further consideration consistent with this opinion. In all other respects, the district director's fee award is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge