

BRB No. 98-811

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

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

Scott O. Nelson (Maples & 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 the Denial of Claimant's Motion for Reconsideration (Case No. 6-157286) 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 December 21, 1993, based upon his alleged work-related hearing impairment. Employer later accepted liability for the claim and voluntarily paid benefits on December 13, 1994, 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 \$1565.25, representing 10 hours of legal services at the hourly rate of \$150, plus expenses of \$65.25. In her Compensation Order Award of Attorney's Fee dated November 20, 1997, the district director awarded claimant's counsel a fee totaling \$217.50 for 1.625 hours at \$100 per hour, and \$55 in expenses, to be paid by employer. The district director found that given the minimal amount of claimant's award, it would be inequitable to assess any of the fee against him as a lien on his compensation. The district director summarily denied claimant's motion for reconsideration.

On appeal, claimant's counsel challenges the district director's denial of an attorney's fee for services rendered after December 13, 1994. Employer responds, urging affirmance of the fee award.¹

Claimant's counsel asserts that, contrary to the district director's determination, all entries on the fee petition after December 13, 1994, totaling 4 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 reimbursement for a covered payment to one medical provider until January 5, 1995, 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 13, 1994, 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

¹Claimant has filed a motion to strike that portion of employer's response brief alleging claimant sought reimbursement for treatment by an unauthorized physician. We note that the exhibits attached to employer's brief do not make any references to Dr. Lamppin as employer alleges. Claimant's motion to strike employer's references to an unauthorized change in physician therefore is granted.

and necessary to claimant's claim and therefore are compensable as attorney's fees.

Employer may be held liable for reasonable "wind-up" services after it has agreed to pay benefits. *See Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995). For the reasons stated in *Everett v. Ingalls Shipbuilding, Inc.*, __ BRBS __, BRB No. 98-492 (Dec. 16, 1998), we vacate the district director's denial of an attorney's fee for all services performed after December 13, 1994, and we remand the case to the district director to provide an adequate discussion of the time requested and services rendered by claimant's counsel after December 13, 1994, and to assess the necessity and reasonableness of the work involved. Specifically, the district director must discern whether these entries represent "wind-up" services for which counsel may be entitled to a fee, payable by employer. *See Nelson*, 29 BRBS at 95.

Accordingly, the district director's denial of all attorney's fees after December 13, 1994, 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