

ARTHUR OLIVER)	BRB No. 89-1831
)	
Claimant-Respondent)	
)	
v.)	
)	
STEVENS SHIPPING COMPANY)	
)	
and)	
)	
GEORGIA INSURERS INSOLVENCY)	
POOL (FOR AMERICAN MUTUAL)	
LIABILITY INSURANCE COMPANY))	
)	
Employer/Carrier-)	
Petitioners)	
)	
SAVANNAH MARITIME ASSOCIATION)	DATE ISSUED:
INTERNATIONAL LONGSHOREMEN'S)	
ASSOCIATION EMPLOYERS WELFARE)	
FUND)	
)	
Intervenor-)	
Respondent)	

ARTHUR OLIVER)	BRB No. 89-4027
)	
Claimant-Petitioner)	
)	
v.)	
)	
UNITED STATES LINES)	
)	
and)	
)	
FIREMAN'S FUND INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeals of the Decision and Order of Robert J. Shea, Administrative Law Judge, and the Compensation Order - Award of Attorney's Fees of N. Sandra Kitchin, District Director, United States Department of Labor.

Ralph R. Lorberbaum (Zipperer & Lorberbaum, P.C.) Savannah, Georgia, for claimant.

Edward T. Brennan (Brennan, Harris & Rominger), Savannah, Georgia, for Stevens Shipping Company and Georgia Insurers Insolvency Pool.

Charles W. Barrow (Barrow, Sims, Morrow & Lee, P.C.), Savannah, Georgia, for United States Lines and Fireman's Fund Insurance Company.

Before: STAGE, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Stevens Shipping Company and Georgia Insurers Insolvency Pool appeal the Decision and Order (88-LHC-1275 and 88-LHC-1276) of Administrative Law Judge Robert J. Shea 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). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. O'Keefe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3). In a consolidated case, claimant appeals the Compensation Order-Award of Attorney's Fees (6-97553) of District Director¹ N. Sandra Kitchin. The amount of an award of an attorney's fee 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., Devine v. Atlantic Container Lines, G.I.E., 23 BRBS 279 (1990); Muscella v. Sun Shipbuilding & Dry Dock Co., 12 BRBS 272 (1980).

Claimant ruptured the achilles tendon of his left foot on November 26, 1980, in the course of his employment with Stevens Shipping Company (Stevens). He consulted Dr. Dewberry, an orthopedic surgeon, who performed surgery. Claimant recuperated for nearly eight months and eventually returned to work. On November 12, 1981, claimant and Stevens entered into a settlement agreement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i), whereby claimant received \$21,756.61 in temporary total and permanent partial disability benefits. Emp. Ex. 2. The agreement provided that Stevens and its insurance carrier, American Mutual

¹The term "district director" has been substituted for the title "deputy commissioner" used in the statute. 20 C.F.R. §702.105.

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

Liability Insurance Company (American Mutual), would continue to provide medical services in accordance with Section 7(a) of the Act, 33 U.S.C. §907(a).

Claimant testified that he continued to have pain and problems with the injured leg and that his condition worsened until he could barely walk. Tr. at 37. In April 1986, claimant returned to Dr. Dewberry who suspected a vascular occlusion and referred claimant to Dr. Stringer, a vascular surgeon. Dr. Stringer confirmed the presence of blood clots and performed a bypass graft. Cl. Ex. 34. Because of complications, Dr. Stringer performed further surgery. On August 27, 1986, while working for a different employer, claimant was involved in a second injury involving the same leg. He developed further complications, underwent more surgery, and eventually his left leg was amputated below the knee. Claimant then started having psychiatric problems. The Savannah Maritime Association International Longshoremen's Association Employers Welfare Fund (ILA Welfare Fund) paid for the medical expenses claimant incurred between April 17, 1986 and August 27, 1986, the date of his second accidental injury, believing that these expenses were not for a work-related condition. Intervenor Ex. 4. Upon learning of claimant's November 26, 1980 work injury, the ILA Welfare Fund² intervened in the Longshore claim, seeking reimbursement of the medical costs it mistakenly paid.³ Stevens and its carrier opposed this claim, arguing that the medical costs at issue were not causally related to the November 26, 1980 work injury and that the medical treatment at issue was neither requested nor authorized as is required under Section 7(d), 33 U.S.C. §907(d) (1988).

In his Decision and Order, the administrative law judge found that claimant's condition in April 1986 was the direct and natural result of his 1980 injury. The administrative law judge further found, contrary to employer's argument, that since claimant had properly obtained authorization to receive treatment from Dr. Dewberry, his initial free choice of physician, his return visit to Dr. Dewberry in 1986 was also authorized because the condition for which claimant sought treatment was related to the original accident. The administrative law judge also found that treatment

²The ILA Welfare Fund is a welfare trust established under the Labor Management Relations Act, 29 U.S.C. §186, and an employee benefit plan under the Employee Retirement Income Security Act, 29 U.S.C. §1001 et seq. Under the terms of its plan documents, the group health benefits payable by intervenor exclude claims for occupational injuries or illnesses.

³The medical expenses incurred by claimant following his August 1986 work accident were eventually paid by his employer at the time of that accident, United States Lines.

provided by Dr. Stringer was reimbursable because he was a vascular specialist to whom claimant was referred by Dr. Dewberry, his authorized treating physician. See 20 C.F.R. §702.406(a). Consequently, the administrative law judge determined that Stevens, claimant's employer at the time of the 1980 accident, was responsible for reimbursing the ILA Welfare Fund for all medical expenses incurred until August 27, 1986, the date of claimant's subsequent industrial accident. Finally, the administrative law judge found that United States Lines, claimant's employer at the time of the second injury, was liable for the medical and psychiatric expenses incurred subsequent to the August 27, 1986 injury.

On appeal, Stevens and Georgia Insurers Insolvency Pool (Georgia Insurers), who became the carrier in this case when American Mutual went bankrupt, argue that the administrative law judge erred in his determination that the medical bills in question are related to the 1980 work injury. Georgia Insurers further contends that the administrative law judge erred in determining that claimant complied with the Section 7 requirements regarding authorization of medical treatment. 33 U.S.C. §907(d).

Subsequent to the submission of the appeal and briefing in this case, the attorney for appellant Georgia Insurers submitted a letter dated November 18, 1991 to the Board, stating that the issue appealed had been resolved by agreement between the parties following a suit in federal court. The letter is accompanied by a copy of a release by the ILA Welfare Fund, which indicates that it agreed to accept \$7,500 from carrier for the medical expenses currently at issue. Because the parties' agreement appears to be dispositive of the issues raised in BRB No. 89-1831, we dismiss this appeal and remand the case to the district director for such further action as may be necessary.⁴

The next issue to be addressed is claimant's appeal of the district director's fee award, BRB No. 89-4027. Claimant's attorney submitted an itemized fee application to the district director, requesting \$7,993.75 for 63.95 hours of legal services at \$125 per hour. The district director allowed the number of hours requested but reduced the hourly rate to \$100, awarding claimant's counsel an attorney's fee of \$6,395.

On appeal, claimant argues that since employer raised no objections to the fee requested and since the administrative law

⁴In November 5, 1991, Georgia Insurers submitted an amended brief challenging the administrative law judge's assessment of an attorney's fee against it. Since this brief was rejected by the Board in a February 1992 Order, the fee issue will not be addressed.

judge approved an hourly rate of \$125 for the legal services performed by counsel at his level, the district director should have been bound by the hourly rate awarded by the administrative law judge. Employer at the time of claimant's August 1986 injury, United States Lines, responds, urging affirmance of the district director's fee award.

We reject claimant's arguments. The determination of the amount of an attorney's fee is within the discretion of the body awarding the fee. See Owens v. Newport News & Shipbuilding Dry Dock Co., 11 BRBS 409, 419 (1979); 20 C.F.R. §702.132(a). Thus, contrary to claimant's assertion, the district director was not bound by the administrative law judge's hourly rate determination.

Because the district director in this case determined the applicable hourly rate based on the complexity of the case, the issues involved, the results obtained, and the expertise of the attorney consistent with 20 C.F.R. §702.132(a), and claimant has failed to demonstrate that the \$100 hourly rate awarded is unreasonable, we affirm her hourly rate determination. See generally Snowden v. Ingalls Shipbuilding, Inc. 25 BRBS 245 (1991) (Brown, J., dissenting on other grounds), aff'd on recon. en banc 25 BRBS 346 (1992) (Brown, J., dissenting on other grounds); Welch v. Pennzoil Co., 23 BRBS 55 (1990).

Accordingly, BRB No. 89-1831 is dismissed, and the case is remanded to the district director for further appropriate action. The district director's award of an attorney's fee, the subject of BRB No. 89-4027, is affirmed.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge