

MELISSA CRAFT)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
TRIPLE A MACHINE SHOP,)	
INCORPORATED)	DATE ISSUED: _____
)	
and)	
)	
LIBERTY MUTUAL INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Order of Steven E. Halpern, Administrative Law Judge, United States Department of Labor.

Michael G. Gerson (Boxer, Elkind & Gerson), Oakland, California, for claimant.

Frank B. Hugg and Mike H. Golston, San Francisco, California, for employer/ carrier.

Before: BROWN and DOLDER, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Order awarding an attorney's fee (89-LHC-2331) of Administrative Law Judge Steven E. Halpern 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 will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with the law. *Muscella v. Sun Shipbuilding & Dry Dock, Inc.*, 12 BRBS 272 (1980).

*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).

Claimant injured both of her knees during her employment with employer. A hearing was held, and the administrative law judge awarded claimant temporary total disability benefits from August 2, 1984 through September 24, 1984 and from January 4, 1985 through May 7, 1986. 33 U.S.C. §908(b). He also awarded permanent partial disability benefits for a 60 percent impairment of the left leg and a 40 percent impairment of the right leg, and medical benefits. 33 U.S.C. §§907, 908(c)(2), (19); Decision and Order at 9. Claimant's counsel filed a petition for an attorney's fee with the administrative law judge, requesting 54.1 hours of service at a rate of \$200 per hour, totalling \$10,820. Additionally, counsel requested \$2,329.98 in costs and an additional fee of \$10,000.¹ Thus, counsel requested a total amount of \$23,149.98. Petition at 3. Employer objected to the hourly rate and the additional \$10,000, and except for one entry did not object to the number of hours requested. Order at 1.

In his Order, the administrative law judge awarded counsel an attorney's fee but reduced the hourly rate from the requested \$200 to \$125 for those hours billed before January 1, 1990 and to \$150 for those hours billed thereafter. Order at 2. The administrative law judge approved 54.1 hours of service and the costs, resulting in an award of \$7,400 plus costs. *Id.* Claimant appeals the award of an attorney's fee, and employer responds, urging affirmance.

Claimant's counsel contends the fee awarded is inadequate. He contends the administrative law judge erred in reducing the hourly rate and in rejecting the additional \$10,000 fee request because of the contingency nature of cases under the Act, the wait required before fees are paid, the numerous and complex issues of this case, and the fact that claimant obtained compensation estimated to be worth over \$200,000. He also argues that the administrative law judge failed to consider the factors in Section 702.132 of the regulations, 20 C.F.R. §702.132.

We reject these contentions. Factors such as risk of loss or delay of payment are considered to be incorporated in the hourly rate and are not separately compensated. *See Hobbs v. Director, OWCP*, 820 F.2d 1528 (9th Cir. 1987), *aff'g Hobbs v. Stan Flowers Co.*, 18 BRBS 65 (1986); *Fisher v. Todd Shipyards Corp.*, 21 BRBS 323 (1988). *See generally City of Burlington v. Dague*, ___ U.S. ___, 112 S.Ct. 2638 (1992). In this case, the administrative law judge clearly stated that he considered the factors enumerated in the regulations, and based on those factors, he concluded that 54.1 hours expended at the rates of \$125 and \$150 per hour are reasonably commensurate with the necessary work performed. Order at 1-2. Counsel has not shown that the administrative law judge abused his discretion in awarding a fee in this manner. *See generally Muscella*, 12 BRBS at 272.

¹Counsel sought the additional \$10,000 "due to the result obtained, quality of work done, and complexity and/or novelty of the issues." Petition at 2-3.

Accordingly, the administrative law judge's Order awarding an attorney's fee is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge