

BRB No. 92-2372A

ALBERT E. KRISE, III	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
E.T. GRESHAM COMPANY,	)	DATE ISSUED:
INCORPORATED	)	
	)	
and	)	
	)	
MARYLAND CASUALTY COMPANY,	)	
INCORPORATED	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

John H. Klein (Rutter & Montagna), Norfolk, Virginia, for claimant.

Robyn L. Neal (Pender & Coward), Virginia Beach, Virginia, for employer/ carrier.

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

PER CURIAM:

Claimant appeals the January 13, 1993, Decision and Order (91-LHC-2730) of Administrative Law Judge Richard K. Malamphy awarding attorney's fees 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).

After a hearing held before the administrative law judge on April 8, 1992, claimant was awarded permanent total disability compensation commencing November 12, 1990, for a work-related back injury, and employer was awarded relief under Section 8(f), 33 U.S.C. §908(f). Claimant's counsel thereafter sought an attorney's fee of \$6,195.75, representing 39 hours of attorney

time at \$155 per hour, and 1.5 hours of paralegal time at \$50 per hour, plus \$308.25 in expenses for work performed before the administrative law judge. In addition, claimant requested a hearing to present evidence to justify the \$155 hourly rate claimed. Employer objected to the fee petition, contending among other things that the \$155 hourly rate sought was excessive given the simple nature of the case and the prevailing fees paid to attorneys in the Norfolk area. A hearing was held on the attorney's fee issue on October 2, 1992. Thereafter, the administrative law judge awarded counsel a fee of \$5,333.25, representing 39 hours of attorney services at \$125 per hour, and 1.5 hours of paralegal time at \$50 per hour, plus expenses of \$308.25. Claimant appeals the administrative law judge's fee award, contending that the administrative law judge abused his discretion in reducing the \$155 hourly rate sought to \$125. Employer responds, urging affirmance of the fee award.<sup>1</sup>

Claimant's assertion that the administrative law judge erred in reducing the hourly rate for attorney time from \$155 to \$125 is rejected. Although claimant correctly asserts that in determining the applicable hourly rate, the administrative law judge erred in stating that \$125 represents the maximum hourly rate permitted by the Board for attorneys handling cases under the Act in the Hampton area during the time period when services were rendered, we hold that on the facts herein this error is harmless. In determining the applicable hourly rate, the administrative law judge fully considered claimant's arguments, which he reiterates on appeal, regarding intervening economic changes; other cases in which hourly rates of between \$150 and \$250 were awarded in cities involving ports of similar importance; the comparability of counsel's fees to fees awarded in Washington, D.C., because the largest private employer in Virginia, Newport News Shipbuilding and Dry Dock Company, employs counsel located there; the contingent nature of recovery; the vital need to attract competent counsel; and the "blind survey" conducted by claimant's counsel. Nonetheless, the administrative law judge found that the \$155 hourly rate claimed was excessive under the established criteria and upon consideration of the issues involved, the quality of representation, the amount of time and work involved, the risk of loss, and other relevant factors determined that an hourly rate of \$125 is reasonably commensurate with the actual necessary work performed. *See* 20 C.F.R. §702.132. Inasmuch as claimant has not met his burden of showing that the \$125 hourly rate awarded is unreasonable, we affirm the administrative law judge's hourly rate determination. *See Maddon v. Western Asbestos Co.*, 23 BRBS 155 (1989); *see generally Welch v. Western Asbestos Co.*, 23 BRBS 395 (1990).

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<sup>1</sup>Although the Director, Office of Workers' Compensation Programs (the Director), initially filed an appeal in this case, challenging the administrative law judge's previous Decision and Order Awarding Benefits and Awarding Section 8(f) Relief dated August 5, 1992, BRB No. 92-2372, the Board dismissed this appeal at the Director's request by Order dated May 24, 1993.

Accordingly, the Decision and Order of the administrative law judge awarding attorney's fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge