

BRB Nos. 92-0833
and 93-1434

CECIL MASK)
)
 Claimant-Petitioner)
)
 v.)
)
 KAISER STEEL CORPORATION) DATE ISSUED:
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 and)
)
 TRANSAMERICA INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeals of the Supplemental Decision and Order - Awarding Attorney's Fees of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor, and the Award of Attorney Fees of Edward Orozco, District Director, United States Department of Labor.

Victoria Edises (Kazan, McClain, Edises & Simon), Oakland, California, for claimant.

Roger A. Levy (Laughlin, Falbo, Levy & Moresi), San Francisco, California, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order - Awarding Attorney's Fees (90-LHC-2533) of Administrative Law Judge Vivian Schreter-Murray, and the Award of Attorney Fees (Case No. 14-89156) of District Director¹ Edward Orozco 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).² The amount of an attorney's fee is discretionary and may be set aside only if the

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

²By Order dated May 25, 1993, the Board consolidated for purposes of decision claimant's appeal

challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. See *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant worked for employer as a welder from 1942 to 1945, during which time he was exposed to asbestos. He voluntarily retired in 1975. On August 30, 1984, claimant was diagnosed as suffering from restrictive lung disease. Claimant subsequently filed a claim for benefits under both the Act and the state workers' compensation statute. At the hearing before the administrative law judge on September 23, 1991, the parties entered into a settlement agreement, wherein employer accepted liability for claimant's continuing medical benefits. The administrative law judge approved the settlement on October 1, 1991.

Claimant's counsel subsequently submitted a fee petition to the administrative law judge requesting an attorney's fee of \$8,632.50, representing 47.9 hours of legal services performed at an hourly rate of \$175, and \$250 for services rendered by paralegals, as well as \$725 in expenses. Employer thereafter submitted specific objections to counsel's fee request. In her Supplemental Decision and Order - Awarding Attorney's Fees, the administrative law judge considered employer's specific objections to the fee request, reduced the hourly rate sought to \$155, reduced the hours sought by counsel to 40.25, approved the charges for counsel's paralegal services, disallowed the requested expenses until counsel provided documentation, and thereafter awarded counsel a fee of \$6,488.75.

Claimant's counsel also filed a fee petition for work performed before the district director in which she requested an attorney's fee of \$5,110.25, representing 30.35 hours of legal services performed by claimant's lead counsel at an hourly rate of \$150, 2.35 hours of legal services performed by claimant's associate counsel at an hourly rate of \$125, 1.4 hours of services performed by a law clerk at an hourly rate of \$85, and 2.9 hours of services performed by counsel's paralegals at an hourly rate of \$50. Employer submitted specific objections to the fee petition. In his Award of Attorney Fees issued on March 26, 1993, the district director considered employer's specific objections to the fee petition and reduced the number of hours sought by claimant's lead counsel to 23.5, reduced the hourly rate sought for services performed by claimant's associate counsel to \$100, reduced the hourly rate sought for services performed by counsel's law clerk to \$60, and disallowed the charges sought for paralegal services, with the exception of \$75 allowed for paralegal services performed by Jena McLemore and \$10 for services performed by paralegal Alan Siraco. The district director thereafter awarded counsel a fee of \$3,929.

On appeal, claimant challenges the reductions in the attorney's fee petitions ordered by both the administrative law judge and the district director. Employer responds, urging affirmance of both fee awards.

Initially, claimant, in both appeals, challenges the reductions made in the hourly rates sought.

of the administrative law judge's Supplemental Decision and Order - Awarding Attorney's Fees, BRB No. 92-0833, and his appeal of the district director's Compensation Order - Award of Attorney Fees, BRB No. 93-1434. 20 C.F.R. §802.104.

Specifically, claimant asserts that the administrative law judge erred in reducing the hourly rate sought by claimant's lead counsel to \$155, since the instant claim was complex and the rate awarded is not commensurate with counsel's qualifications. Similarly, claimant challenges the hourly rates awarded by the district director to associate counsel, \$100, and counsel's law clerk, \$60, asserting that the awarded rates do not account for the legal experience of these providers.

The complexity of legal issues is but one factor to be considered when awarding an attorney's fee. *See* 20 C.F.R. §702.132; *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). In the instant case, the administrative law judge specifically considered the complexity of the legal issues, as well as claimant's lead counsel's qualifications, in finding that an hourly rate of \$155 was commensurate with the services performed. In addressing the hourly rate, the district director similarly considered the qualifications of claimant's associate counsel and paralegal in awarding their respective hourly rates. Inasmuch as claimant's assertions that counsel's qualifications require a higher hourly rate are insufficient to meet his burden of proving the hourly rates awarded by the administrative law judge and district director were unreasonable, we affirm the rates awarded by the administrative law judge and the district director. *See Ferguson v. Southern States Cooperative*, 27 BRBS 16 (1993); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993).

Claimant next contends that both the administrative law judge and the district director erred in reducing the hours requested in the respective attorney's fee petitions filed with each official. Specifically, claimant contends that the number of hours requested were not excessive, that services should be approved at the minimum billing rate, and that billing for the preparation of internal memoranda should be compensable. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved, and the amount of benefits awarded. *See generally Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Parrott v. Seattle Joint Port Labor Relations Committee of the Maritime Ass'n*, 22 BRBS 434 (1989).

In her Supplemental Decision and Order, the administrative law judge reduced the time requested by claimant's lead counsel for the review of correspondence, and disallowed the entries for such activities as calendaring of dates, leaving of phone messages for the person to return her call, and time spent on inter-office memoranda to paralegals. The administrative law judge further reduced the requested number of hours by 5.35 for services that she found to be inadequately explained in the fee petition. Thus, the administrative law judge reduced claimant's counsel's billable hours from 47.9 to 40.25. In his Award of Attorney Fees, the district director: disallowed time spent on services that were duplicative of the state workers' compensation claim;³ disallowed

³It is well-established that where services are performed in conjunction with a state act, the claimant has the burden of showing both that these services were necessary to establish entitlement under the Act and that claimant's attorney has not previously been compensated for these services under the state act. *Roach*, 16 BRBS at 116. In the instant case, claimant concedes that his state

entries that he deemed part of counsel's overhead, including time spent on inter-office memoranda; reduced the time requested for the review of ordinary correspondence; and disallowed the entries for services performed by counsel's paralegals as being clerical in nature and part of counsel's overhead,⁴ with the exception of \$85 allowed for services performed by two paralegals. The district director thus reduced the hours sought by claimant's counsel from 30.35 to 23.5.

We hold that claimant's assertions on appeal are insufficient to meet his burden of proving that the administrative law judge and district director abused their discretion in reducing the number of requested hours in the fee petitions. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). In each instance, both the administrative law judge and the district director set forth the rationale upon which they relied in reducing the number of hours sought by counsel. Moreover, in contending that the administrative law judge and the district director erred in reducing various requested quarter-hour entries, claimant's reliance on *Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986), is misplaced. While the Board has held that use of a quarter-hour minimum billing method is permissible, *see 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), fees for services deemed excessive may properly be disallowed. *See Davenport v. Apex Decorating Co., Inc.*, 18 BRBS 194 (1986). Accordingly, we affirm the number of hours awarded to counsel by the administrative law judge and the district director.

workers' compensation claim was settled for \$25,000, of which claimant's counsel received 15 percent, or \$3,750. Claimant's assertion that this amount did not *adequately* compensate counsel for services rendered in the state action does not meet his burden of establishing that counsel has not been compensated for services under the state act.

⁴Traditional clerical duties performed by clerical employees are not compensable services for which separate billing is permissible; rather, it must be included as part of counsel's overhead. *See Morris v. California Stevedore & Ballast Co.*, 10 BRBS 375 (1979).

Lastly, we reject claimant's counsel's contention that the fee awards of Administrative Law Judge Alfred Lindeman in *Alexander v. Triple A Machine Shop*, No. 91-LHC-1163 (Feb. 24, 1992), and Administrative Law Judge Joseph Matera in *O'Leary v. Moore Dry Dock*, No. 84-LHC-2677 (Aug. 15, 1985), mandate a different result in the case of the fee awarded by the administrative law judge herein. Rather, the determination of the amount of an attorney's fee is within the discretion of the body awarding the fee based on the circumstances of the specific case before it. *See* 20 C.F.R. §702.132.

Accordingly, the Supplemental Decision and Order - Awarding Attorney's Fees of the administrative law judge, BRB No. 92-0833, and the Award of Attorney Fees of the district director, BRB No. 93-1434, are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge