

BRB No. 88-2433

RAUL PLASCENCIA)
)
Claimant-Respondent)
)
v.)
)
TODD PACIFIC SHIPYARDS) DATE ISSUED:
CORPORATION)
)
and)
)
AETNA CASUALTY & SURETY)
COMPANY)
)
Employer/Carrier-)
Petitioners) DECISION and ORDER

Appeal of the Compensation Order - Award of Attorney Fees of Buddy Dedmon, Acting Assistant District Director, United States Department of Labor.

Robert W. Nizich (Naylor & Nizich), San Pedro, California, for claimant.

Carol L. Powell (Mullen & Filippi), San Francisco, California, for employer/carrier.

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

PER CURIAM:

Employer appeals the Compensation Order - Award of Attorney Fees (Case No. 18-17724) of Acting Assistant District Director Buddy Dedmon 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 will not be set aside unless shown by the challenging party 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 sustained a work-related back injury on March 15, 1983. Administrative Law Judge R.S. Heyer awarded claimant permanent partial disability benefits pursuant to 33 U.S.C.

§908(c)(21). Employer appealed this decision to the Board, challenging the administrative law judge's findings with regard to the date of maximum medical improvement and loss in wage-earning capacity, as well as the administrative law judge's fee award. BRB No. 88-432. Employer also appealed the district director's¹ fee award of \$3,562.50 to claimant's counsel for work performed at that level. BRB No. 88-2433. These appeals were consolidated for decision by Order dated January 11, 1987.

Subsequently, employer filed a motion for modification with the administrative law judge and requested that the case in chief be remanded to the administrative law judge. *See* 33 U.S.C. §922. By Order dated September 19, 1991, the Board granted employer's motion to remand BRB No. 88-432 for modification proceedings, noting that employer's appeal of the district director's fee award remained pending. On remand, the parties submitted to the administrative law judge a joint application for settlement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i).

In a decision dated May 21, 1992, Administrative Law Judge Vivian Schreter-Murray approved the parties' settlement of claimant's compensation claim pursuant to Section 8(i). The settlement agreement also specifically states that employer agreed to pay to claimant's counsel an attorney's fee of \$12,250 "for services rendered before the Office of Workers' Compensation Programs, Office of Administrative Law Judges, The Benefits Review Board, to include the present Petition for Modification Proceedings." Stipulations at 6. In light of the parties' agreement to settle the issue of claimant's counsel's entitlement to an attorney's fee before the district director, employer's appeal of the district director's fee award is moot.

Accordingly, employer's appeal in BRB No. 88-2433 is dismissed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

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