BRB No. 92-2187

MITCHELL PEEPLES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
RCA GOVERNMENT SERVICES, AUTEC PROJECT	)	
	)	DATE ISSUED:
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Granting Attorney Fees of Richard K. Malamphy, United States Department of Labor.

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

Before: HALL, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Granting Attorney Fees (90-LHC-1005) of Administrative Law Judge Richard K. Malamphy 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. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On or about June 21, 1986, claimant injured his neck and right shoulder while working for employer. Claimant, who has not returned to gainful employment since his injury, sought permanent total disability compensation under the Act. At the hearing before the administrative law judge, the parties stipulated that claimant was entitled to permanent total disability compensation based upon an average weekly wage of $359.40 as well as past and future medical benefits. Accordingly, the only issues pending for adjudication before the administrative law judge were employer's entitlement to Section 8(f), 33 U.S.C. §908(f), relief, and the date of maximum medical improvement. In his Decision and Order dated April 14, 1992, the administrative law judge found that employer was entitled to Section 8(f) relief and that claimant's condition reached maximum medical improvement as of August 11, 1987.

Thereafter, claimant's attorney filed a fee petition for work performed before the administrative law judge in which he requested $8,133.75, representing 56.25 hours billed at $145 per hour for services rendered prior to January 2, 1992, and $155 per hour thereafter, plus expenses of $39.50. Employer filed objections to the petition. In a Supplemental Decision and Order Granting Attorney Fees dated July 16, 1992, the administrative law judge awarded claimant's counsel a fee of $5,720.75, representing 44.25 hours of attorney services at the hourly rate of $125, plus 3 hours of paralegal services at $50 per hour and $39.50 in costs. Claimant appeals the fee award on various grounds. Employer has not responded to claimant's appeal.

Initially, we reject claimant's assertion that the administrative law judge's fee award is improper because he disregarded long-held case precedent establishing that minimum quarter-hour billing is reasonable and failed to adequately explain the reductions he made. The administrative law judge allowed only 5.254 of the 10.5 hours claimed by counsel for routine activities which encompassed 42 entries and indicated that he did not reduce the time for more "substantive" items such as receiving medical and client records, and answering interrogatories. Although the Board has previously recognized that billing in quarter-hour increments is reasonable because it is specifically provided for in 20 C.F.R. §802.203 and is not contrary to Section 28 of the Act, 33 U.S.C. §928, or 20 C.F.R. §702.132, *see Neeley v. Newport News Shipbuilding & Dry Dock Co.,* 19 BRBS 138 (1986), we find no error by the administrative law judge in reducing these entries. Rather, the administrative law judge acted within his discretion in disallowing half of the quarter-hour entries, after determining that the time claimed for routine matters was excessive. *See generally Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Claimant's contention that the administrative law judge erred in allowing only 10 of the 13.75 hours claimed for telephone correspondence similarly must fail. The administrative law judge determined that the 13.75 hours claimed for making and receiving 54 telephone calls was excessive both in terms of the number of calls made and the time claimed for them. Inasmuch as claimant has failed to establish an abuse of discretion made by the administrative law judge in this regard, we affirm this determination. *Edwards v. Todd Shipyards Corp.*, 25 BRBS 49, 53 (1991), *rev'd on other grounds sub nom. Edwards v. Director, OWCP,* 999 F.2d 1374, 27 BRBS 81 (CRT)(9th Cir. 1993), *cert. denied,* U.S. , 114 S.Ct. 1539 (1994).

Finally, we reject claimant's assertion that the administrative law judge erred in refusing to award the $155 and $145 hourly rates claimed. Claimant correctly asserts that in determining the applicable hourly rate, the administrative law judge erroneously indicated that $125 represented 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, however, that on the facts herein this error is harmless because the administrative law judge, acting within his discretion, also found that the hourly rates claimed were excessive under the established criteria and that an hourly rate of $125 was reasonable and appropriate. *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, the administrative law judge's hourly rate determination is affirmed. *See Maddon v. Western Asbestos Co.*, 23 BRBS 155 (1989); *see generally Welch v. Western Asbestos Co.*, 23 BRBS 395 (1990).

Accordingly, the administrative law judge's Supplemental Decision and Order Granting Attorney Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge