

WALTER L. FISHER)
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 Claimant-Respondent)
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 v.)
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 SHELL OFFSHORE, INCORPORATED) DATE ISSUED: Mar 18, 2005
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 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney's Fees of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Thomas V. Alonzo, Lafayette, Louisiana, for claimant.

Jeffrey I. Mandel (Juge, Napolitano, Guilbeau, Ruli, Frieman & Whiteley), Metairie, Louisiana, for self-insured employer.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney's Fees (2002-LHC-2605) of Administrative Law Judge C. Richard Avery 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.*, as extended by the Outer Continental Shelf Lands Act, 43 U.S.C. §1301 *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).

On November 29, 1998, claimant, an electrician, injured his back and leg at work. Employer voluntarily paid claimant temporary total disability benefits from November 30, 1998, through November 17, 2000, and continuing permanent partial disability benefits from November 18, 2000. After the hearing in this claim, the parties settled the case for \$280,000,

representing \$260,000 in compensation and \$20,000 in medical benefits.

Claimant's counsel subsequently submitted a fee petition to the administrative law judge, requesting an attorney's fee of \$26,720, representing 133.6 hours of attorney services at \$200 per hour and \$1,700 in expenses. Employer filed objections. The administrative law judge issued a notice of deficiency requiring claimant's counsel to file an amended fee petition stating the dates his services were rendered. Claimant's counsel filed an amended fee petition again requesting a fee of \$26,720, but did not include a request for expenses. Employer filed supplemental objections to the amended fee petition. In his Supplemental Decision and Order Awarding Attorney's Fees, the administrative law judge awarded a fee of \$12,276.25, representing 70.15 hours of attorney services at \$175 per hour. The administrative law judge, in addition to reducing the hourly rate, disallowed 62.45 hours for services rendered while the case was pending before the district director, and one hour as noncompensable time spent discussing claimant's vacation plans.

On appeal, employer challenges the administrative law judge's award of certain itemized entries and his award of an hourly rate of \$175. Claimant's counsel responds in support of the fee award.

Employer initially contends that the administrative law judge erred in awarding a fee for 15 hours of undocumented time itemized as Number 159 on counsel's amended fee petition; this item states that counsel believes the services to have occurred in June and July 2003, approximately 90 days prior to the hearing in this case.¹ Employer contends that no specific services are documented, that the fee petition incorrectly states that the services occurring in June and July 2003 were rendered 90 days prior to the hearing date when the hearing was held on May 21, 2003, and that the petition differs substantially from Item 159 found on the initial fee petition.² We remand the case for the administrative law judge to reconsider the compensability of this time. The administrative law judge enumerated employer's objection to Item 159, but did not specifically address it, and he awarded all time

¹ Item 159 of the amended fee petition states:

June 1, 2003 – July 30, 2003. Plaintiff estimate (sic) undocumented time. It is believed that the majority of this time occurred approximately 90 days prior to the trial date. The entirety of this 15 hour work period was done by Thomas V. Alonzo.

² Item 159 on the initial fee petition requested 15 hours for undocumented time estimated to be between 12-15 hours for "undocumented phone conversations, numerous meetings with [claimant], review of additional jurisprudence, preparation for depositions, trial, discussions with secretaries, concerning preparation of trial, outlining of exhibits, and trial theories." Item 159, Initial Fee Petition.

requested for this item. Supplemental Decision and Order at 2. The regulations require that the fee petition contain a complete statement of the extent and character of the necessary work done and a description of the hours devoted to each category of work. 20 C.F.R. §702.132(a). On remand, the administrative law judge must address employer's objections to Item 159 and the compensability of the services in light of the regulation, and explain why he is allowing or disallowing this time.

Employer next contends that the administrative law judge erred in awarding a fee for services itemized in Numbers 7-9, 13, 18, and 65 of counsel's amended fee petition. These items request a total of 7.25 hours for services performed both by counsel and at least one of his support staff. The administrative law judge identified employer's objections to these entries but did not explain why he rejected them. Supplemental Decision and Order Awarding Attorney's Fees at 2. The applicable regulations specify that the fee petition must describe with particularity the professional status of each person performing the work concomitant with their billing rate. 20 C.F.R. §702.132(a). Moreover, employer is not liable for time spent by clerical staff on purely clerical matters. *See Zeigler Coal Co. v. Director, OWCP [Hawker]*, 326 F.3d 894 (7th Cir. 2003); *Brinkley v. Dep't of the Army/NAF*, 35 BRBS 60(2001)(Hall, C.J., dissenting on other grounds); *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, *modifying on recon.*, 28 BRBS 27 (1994); *Staffile v. Int'l Terminal Operating Co.*, 12 BRBS 895 (1980). We, therefore, vacate the administrative law judge's award of all time for these items, and remand the case for the administrative law judge to address whether the services are clerical and therefore not compensable, and/or whether compensable services were performed by support staff and are compensable at a lower hourly rate than that at which the attorney time is recompensed.

Employer also contends that the administrative law judge erred in awarding time spent on activities where the dates are identified as "unknown." The administrative law judge stated employer's objection in his decision but did not specifically reject it. Supplemental Decision and Order at 1. The administrative law judge may award a fee only for services rendered before his office. *See Stratton v. Weedon Eng'g Co.*, 35 BRBS 1 (2001)(*en banc*). Indeed, in the instant case, the administrative law judge disallowed 62.45 hours as time spent prior to the time the case was referred to the Office of Administrative Law Judges on August 6, 2002. As it is unclear whether items 118 and 122 request a fee for services rendered while the case was before the administrative law judge, we vacate the administrative law judge's award of all time for these services, and remand for reconsideration of this issue.

Employer raises other arguments concerning the administrative law judge's fee award. We have considered each of them and hold that they are without merit. Briefly, employer asserts that the hourly rate awarded is excessive given that this is counsel's first longshore case. Employer, however, has shown no abuse of discretion in the administrative law judge's finding that \$175 per hour is a reasonable rate. *See Story v. Navy Exch. Serv. Ctr.*, 33 BRBS 111 (1999); Supplemental Decision and Order at 2. Moreover, employer has shown no abuse

in discretion in the administrative law judge's awarding a fee based on counsel's information and belief as to the date the services occurred and on entries that contained multiple services. *See* 20 C.F.R. §702.132(a). The administrative law judge acted within his discretion in finding the amended fee petition specific enough to satisfy the applicable regulation and that the services were reasonable and necessary and not redundant or excessive. *Forlong v. Am. Sec. & Trust Co.*, 21 BRBS 155 (1988); 20 C.F.R. §702.132; Supplemental Decision and Order at 2. Finally, employer has not shown that any of the services for which the administrative law judge awarded a fee are related to claimant's opposition to employer's entitlement to Section 8(f) relief. 33 U.S.C. §908(f); *see Berkstresser v. Washington Metro. Area Transit Auth.*, 16 BRBS 231 (1984).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees is vacated in part, and the case is remanded to the administrative law judge for reconsideration of Items 7-9, 13, 18, 65, 118, 122, and 159 consistent with this opinion. In all other respects, the administrative law judge's fee award is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge