

BRB Nos. 08-0809
and 08-0836

W.M.)
)
Claimant-Respondent)
)
v.)
)
JEFFBOAT, LLC) DATE ISSUED:
) 03/26/20092009
and)
)
SIGNAL MUTUAL INDEMNITY)
ASSOCIATION, LTD.)
)
Employer/Carrier-)
Petitioners)

DECISION and ORDER

Appeals of the Attorney Fee Order and the Decision Denying Attorney Fee Order Reconsideration of Donald W. Mosser, Administrative Law Judge, United States Department of Labor, and the Compensation Order Award of Attorney's Fees and the Letter Denying Reconsideration of Bradley Soshea, District Director, United States Department of Labor.

Melissa M. Olson (Embry and Neusner), Groton, Connecticut, for claimant.

Douglas P. Matthews (King, Krebs & Jurgens, P.L.L.C.), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Attorney Fee Order and the Decision Denying Attorney Fee Order Reconsideration (2007-LHC-01785) of Administrative Law Judge Donald W. Mosser and the Compensation Order Award of Attorney's Fees and the Letter Denying Reconsideration of District Director Bradley Soshea (OWCP No. 08-128561) 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 Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for a 31.5 percent binaural hearing impairment due to exposure to occupational noise. On July 16, 2007, the case was transferred to the Office of Administrative Law Judges. Prior to a hearing, the parties agreed to settle the claim, and the administrative law judge issued a Decision and Order Approving Settlement on November 9, 2007. Subsequently, claimant's counsel submitted an attorney's fee petition for work performed before the district director in the amount of \$2,212.02, representing 7.75 hours of legal services at the hourly rate of \$271, .25 hours of work performed by a legal assistant at the hourly rate of \$77, and costs in the amount of \$94.52. In addition, counsel submitted an attorney's fee petition for work performed before the administrative law judge in the amount of \$967.75, representing 3.5 hours of legal services at the hourly rate of \$271, and .25 hours of legal services performed by a legal assistant at the hourly rate of \$77. Employer filed objections to, *inter alia*, the hourly rate requested for attorney time because counsel practices in Connecticut and the services were rendered in southern Indiana.

In an Attorney Fee Order issued on February 27, 2008, the administrative law judge discussed employer's objection, but awarded counsel the requested hourly rate of \$271. The administrative law judge found that counsel is an experienced attorney who rendered high quality representation. He further found that counsel is very knowledgeable in the specialized area of longshore law. The administrative law judge awarded counsel the requested fee of \$967.75.¹ In his Compensation Order, the district director discussed employer's objections and found that the requested hourly rate of \$271 is fair and reasonable for the reasons stated by the administrative law judge. However, the district director reduced the number of hours requested on July 13, 2007 by .75 hours, and thus awarded a fee in the amount of \$2,008.77.²

On appeal, employer contends that the administrative law judge and district director erred in finding that claimant's counsel is entitled to a fee based on the hourly rate of \$271 as claimant did not establish the applicable rates in the locale where the claim arose nor her own rates with other clients. Employer avers, as it did below, that an hourly rate of \$200 is appropriate for the geographic area in which this case arose. Claimant responds, urging affirmance of the awards of an attorney's fee based on the hourly rate of \$271. Employer has filed a reply brief.

¹ The administrative law judge denied employer's request for reconsideration.

² The district director also denied employer's request for reconsideration.

We reject employer's contentions of error. Employer has failed to establish an abuse of the administrative law judge's and district director's discretionary authority. The administrative law judge and district director appropriately addressed the regulatory factors of 20 C.F.R. §702.132 and employer's specific objections in finding that the requested fee, including the hourly rate of \$271, was reasonable in view of the successful claim. For the reasons stated in *Jeffboat, L.L.C. v. Director, OWCP [Furrow]*, 553 F.3d 487 (7th Cir. 2009), we reject employer's contention that the administrative law judge and district director erred in awarding claimant's counsel a fee based on the hourly rate of \$271. Thus, the fee awards are affirmed.

Accordingly, the Attorney Fee Order of the administrative law judge and the Compensation Order Award of Attorney's Fees of the district director are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge