

BRUCE W. ZIMMER)
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 Claimant-Respondent)
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 v.)
)
 JACK GRAY TRANSPORT)
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 and)
)
 GAB ROBINS o/b/o)
 INDIANA GUARANTEE)
 ASSOCIATION)
)
 Employer/Carrier-)
 Petitioners)

DATE ISSUED: May 7, 2004

DECISION and ORDER

Appeal of the Supplemental Decision and Order Granting Attorney Fees and the Order Denying Motion for Reconsideration and Granting Request for Additional Attorney's Fees of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

H. Thomas Lenz (Spector & Lenz, P.C.), Chicago, Illinois, for claimant.

Gregory P. Sujack (Garofalo, Schreiber, Hart & Storm), Chicago, Illinois, for employer/carrier.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Granting Attorney Fees and the Order Denying Motion for Reconsideration and Granting Request for Additional Attorney's Fees (2001-LHC-3098) of Administrative Law Judge Daniel J. Roketenetz 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 an injury to his left shoulder on September 14, 1998, when, during the course of his employment as a crane operator for employer, he jerked the control lever of crane while attempting to rotate that machine. Employer voluntarily paid claimant temporary total disability benefits from September 15, 1998 to August 11, 2000, and temporary partial disability benefits from August 11, 2000 through January 31, 2001, based on an average weekly wage of \$1,750.38.¹ 33 U.S.C. §908(b), (e). In his Decision and Order – Award of Benefits, the administrative law judge awarded claimant permanent partial disability benefits under the Act’s schedule for a five percent impairment to his left hand, ongoing permanent partial disability benefits resulting from his impairment to his left shoulder commencing August 11, 2000, and medical expenses. *See* 33 U.S.C. §§908(c)(3), (21), 907. Employer’s motion for reconsideration was subsequently denied by the administrative law judge.

Thereafter, claimant’s counsel filed a petition for an attorney’s fee for work performed before the administrative law judge in the amount of \$16,298.19. In a Supplemental Decision and Order Granting Attorney Fees, the administrative law judge, after stating that employer had not filed objections to claimant’s counsel’s fee petition, awarded counsel a fee of \$16,291.94, representing 11 hours of services rendered at an hour rate of \$195, 56.5 hours of services rendered at an hourly rate of \$200, 7.75 hours of services rendered at an hourly rate of \$15, and \$1,180.69 in expenses. Upon its receipt of the administrative law judge’s Supplemental Decision and Order, employer moved for reconsideration of the fee awarded to claimant’s counsel; with its motion for reconsideration to the administrative law judge, employer submitted specific objections to claimant’s counsel’s fee request. The administrative law judge subsequently issued an Order instructing claimant to show just cause as to why employer’s motion for reconsideration should not be granted. Claimant’s response to this Order addressed the specific objections raised by employer in its motion for reconsideration. In an Order Denying Motion for Reconsideration, the administrative law judge, having reviewed both employer’s motion and claimant’s response, found that employer’s objections lacked merit and he accordingly denied employer’s motion for reconsideration.²

Employer appeals the fee award, arguing that the administrative law judge erred by failing to specifically address its objections to claimant’s counsel’s fee petition. Claimant responds, urging affirmance.

¹ These voluntary payments of compensation totaled approximately \$97, 900.

² In his response to the administrative law judge’s Order to Show Cause, claimant sought an additional fee of \$537.50 for defending his fee petition. The administrative law judge found this request to be reasonable, and he accordingly awarded claimant’s counsel the additional fee that he requested.

After review of the administrative law judge's Order Denying Motion for Reconsideration, we hold that employer has not demonstrated that the administrative law judge abused his discretion in awarding claimant's counsel his requested attorney's fee. *See generally Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988). In its motion for reconsideration before the administrative law judge, employer raised multiple objections to claimant's counsel's fee petition. In this regard, employer contended that numerous entries set forth in that fee petition were excessive, that claimant's counsel's method of billing was improper, that counsel's hourly rate should not exceed \$205, and that the \$400 reimbursement sought for the preparation of Dr. Thomas' report should be denied in its entirety. Thereafter, in his Order Denying Motion for Reconsideration, the administrative law judge specifically found that, after reviewing employer's motion for reconsideration and claimant's response to the objections, employer's objections lacked merit, while claimant's counsel's attorney fee request is both reasonable and supported by ample precedent.³ *See* Order at 2. Accordingly, the administrative law judge denied employer's motion for reconsideration. Employer's assertions on appeal are insufficient to meet its burden of proving that the administrative law judge abused his discretion when he considered and thereafter overruled the objections raised by employer on reconsideration. Thus, as the administrative law judge considered and thereafter rejected the objections to claimant's counsel's fee petition raised by employer on reconsideration, we decline to reduce or disallow the number of hours or the hourly rate awarded by the administrative law judge. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). Accordingly, we affirm the administrative law judge's award of a fee and costs totaling \$16,291.94 to claimant's counsel. *See generally Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

³ Employer acknowledges that the administrative law judge on reconsideration considered, but ultimately overruled, its objections to claimant's counsel's fee petition. *See* Employer's brief at 3; Employer's reply brief at 1-2.

Accordingly, the administrative law judge's Supplemental Decision and Order Granting Attorney Fees and Order Denying Motion for Reconsideration and Granting Request for Additional Attorney's Fees are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge