BRB No. 98-0427

WENDALL K. TAYLOR	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
CRAFTSMAN CONTRACTORS, INCORPORATED	)	
	)	
	)	
and	)	
	)	
U.S. FIDELITY & GUARANTY COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Compensation Order of Jeana F. Jackson, District Director, United States Department of Labor.

Joseph G. Albe, Metairie, Louisiana, for claimant

Michael J. McElhaney, Jr. (Colingo, Williams, Heidelberg, Steinberger & McElhaney), Pascagoula, Mississippi, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Compensation Order (Case No. 6-145876) of District Director Jeana F. Jackson 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 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).

Claimant injured his right hand in a work-related fall on March 24, 1992.

Employer paid temporary total disability benefits to claimant from May 25, 1992 to November 30, 1992, and permanent partial disability benefits for a scheduled injury to the hand from November 30, 1992 to November 22, 1994. Thereafter, claimant filed a claim for benefits under the Act, and, while his Longshore case was pending, filed a suit in federal district court pursuant to 33 U.S.C. §905(b) and the Jones Act, 42 U.S.C. §688(a).

The administrative law judge awarded claimant temporary total disability benefits from March 25, 1992 until March 25, 1994, based on an average weekly wage of $526.95. Employer also was ordered to pay claimant compensation for temporary partial disability benefits from March 22, 1994, and continuing until such time that claimant undergoes surgery and recuperates, based on an average weekly wage of $526.95 and a residual earning capacity of $222.86.[1] Additionally, the administrative law judge ordered employer to reimburse claimant for medical expenses which resulted from the March 24, 1992 injury. Subsequent to the issuance of the administrative law judge's decision, claimant's counsel was awarded an attorney's fee of $32,572.50 for work performed before the administrative law judge.

Claimant's counsel filed a fee petition with the district director requesting a fee of $43,689.23, representing 258.75 hours at $150 per hour, plus costs in the amount of $4,871.73, for a total of $43,689.23. The district director awarded claimant's counsel an attorney's fee of $23,021.25, representing 153.475 hours at $150 per hour, plus $4,871.73 in costs.

On appeal, claimant's counsel concedes that the district director correctly reduced 12.8 hours included in claimant's fee petition for work which was performed before the administrative law judge. Claimant contends, however, that the district director erred in reducing the remainder of the requested fee as excessive and duplicative, and requests that the district director's compensation order be amended to award $38,817.50 in attorney's fees. Employer responds, urging affirmance.

[1]We note that an award of temporary partial disability benefits pursuant to Section 8(e), 33 U.S.C. §908(e), cannot exceed a period of five years.

We affirm the district director's fee award.[2] Claimant's contention that the district director erred in reducing services she found to be excessive and duplicative is without merit, as claimant has not established that the district director abused her discretion in this regard. The Board has held that an attorney's fee may be awarded for services performed in a collateral action when the services are necessary to establish entitlement under the Longshore Act. *Eaddy v. R.C. Head and Co.*, 13 BRBS 455 (1981). It is counsel's burden is to show that the services were necessary to establish entitlement under the Act. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984). Inasmuch as the district director stated she took into account, *inter alia,* the actual necessary work performed, her decision to reduce items deemed to be duplicative or excessive is not unreasonable. *See* 20 C.F.R. §702.132. Moreover, we note that the fee awarded by the district director ($23,021.25), plus the fee awarded by the administrative law judge ($32,572.50), is more than adequate considering the degree of claimant's success and the amount of benefits obtained. *See Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT) (5th Cir. 1993).

Accordingly, we affirm the district director's Compensation Order awarding an attorney's fee and costs in the amount of $27,892.98.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

[2]We reject claimant's contention that employer's response to the fee petition was untimely and that the district director therefore erred in accepting it. In arguing that employer's response is untimely, claimant relies on the administrative law judge's decision issued on January 3, 1997, which required claimant to file his fee petition with the administrative law judge within twenty days of service of the order, and required employer's response to be filed within twenty day of receipt of claimant's fee petition. These time frames applied solely to the fee request for work performed before the administrative law judge, and it was within the district director's discretion to accept employer's response to the fee request before her as timely filed.

JAMES F. BROWN
Administrative Appeals Judge