BRB No. 03-0286

TERRY SHORTS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED:Oct. 30, 2003
	)	
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Attorney=s Fee of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Breit Klein Camden L.L.P.) Norfolk, Virginia, for claimant.

Christopher R. Hedrick (Mason, Mason, Walker & Hedrick) Newport News, Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Attorney=s Fee (2001-LHC-1801) of Administrative Law Judge Daniel A. Sarno, Jr., 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, a security guard, sustained an injury to his left wrist during the course of his employment and sought benefits under the Act. Employer controverted the claim, contesting

coverage under the Act and the extent of claimant=s disability.[1] Claimant=s pre-hearing statement lists jurisdiction and temporary partial disability benefits as the outstanding issues. However, prior to the hearing the parties agreed that claimant was a covered employee and that he sustained two periods of temporary total disability and a 16 percent permanent impairment of his left upper extremity. Therefore, the administrative law judge entered an order based on the parties= stipulations and awarded claimant temporary total disability benefits from December 31, 2000 to January 2, 2001, and August 16, 2001 to January 11, 2002. In addition, the administrative law judge awarded claimant permanent partial disability benefits for a 16 percent impairment of the left upper extremity pursuant to Section 8(c)(1), 33 U.S.C. '908(c)(1), and medical benefits pursuant to Section 7 of the Act, 33 U.S.C. '907.

Subsequently, claimant=s counsel submitted an attorney=s fee petition requesting $4,566, representing 21.09 hours of legal services at the hourly rate of $200 and 4.64 hours of paralegal services at the hourly rate of $75, and $132 in costs. Claimant=s counsel also submitted supplemental fee petitions on June 28 and July 22, 2002 for an additional fee of $830. Employer responded, contesting the billing rate, the degree of specificity in the fee petition, and claimant=s overall degree of success before the administrative law judge.

In his Decision and Order Awarding Attorney=s Fee, the administrative law judge found that the hourly rate of $200 for the attorney=s work and $75 for the paralegal=s work is reasonable and reflective of the prevailing rate for attorneys in the geographic location. In addition, the administrative law judge rejected employer=s contention that the fee petition lacked specificity. Lastly, the administrative law judge found that claimant was fully successful in his prosecution of the claim as the parties agreed that he is covered under the Act and he was awarded disability benefits for his injury. Therefore, the administrative law judge concluded that claimant=s counsel is entitled to a fee of $5,364 to be paid by employer

[1] Employer=s pre-hearing statement dated July 19, 2001 states that employer contests coverage under the Act and contends that claimant suffered only a contusion to his wrist which caused him to miss only three days of work.

pursuant to Section 28 of the Act, 33 U.S.C. '928.[2]

On appeal, employer contends that the administrative law judge erred in failing to reduce the amount of the fee awarded by 50 percent to reflect that claimant prevailed only on 50 percent of the issues in contention before the administrative law judge. Specifically, employer contends the administrative law judge erred by failing to apply *Hensley v. Eckerhart*, 461 U.S. 421 (1983), to reduce the fee by 50 percent as claimant only prevailed on the issue of coverage. Claimant responds, urging affirmance of the administrative law judge=s decision as he contends that he was fully successful before the administrative law judge.

In *Hensley*, the Supreme Court held that a fee award, under a fee-shifting scheme, should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation. *Hensley*, 461 U.S. at 434; *see also George Hyman Constr. Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161(CRT)(D.C. Cir. 1992); *General Dynamics Corp. v. Horrigan*, 848 F.2d 321, 21 BRBS 73(CRT) (1st Cir.), *cert. denied*, 488 U.S. 997 (1988). If the claimant achieves only partial or limited success, the fee award should be for an amount that is reasonable in relation to the results obtained. *Hensley*, 461 U.S. at 435-436.

In the present case, the administrative law judge considered and rejected employer=s contention that claimant was only partially successful in the prosecution of his claim. He found that employer controverted the claim in its entirety and that, with the assistance of counsel, claimant was awarded disability benefits for his injury under the Act. Although claimant originally sought benefits for continuing temporary partial disability, prior to the hearing claimant agreed to stipulate to his entitlement to permanent partial disability benefits rather than to temporary partial disability benefits based on the March 18, 2002 report of Dr. Bower. Thus, contrary to employer=s contention, claimant did not agree that Ano compensation was due as to this claim,@ Emp. Brief at 7, but rather agreed that he had reached maximum medical improvement and thus was entitled to permanent rather than temporary disability benefits. As employer contested claimant=s entitlement to any benefits under the Act, and as claimant was ultimately awarded temporary total as well as permanent partial disability benefits pursuant to the schedule, we reject employer=s contention that claimant was only partially successful in his prosecution of the claim. Therefore, we affirm the administrative law judge=s finding that the fee should not be reduced. *See James J.*

[2] The administrative law judge disallowed three entries totaling $78, which he found involved services performed before the Office of Workers= Compensation Programs. This finding is unchallenged on appeal.

Flanagan Stevedores, Inc. v. Gallagher, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993) (*en banc*) (Brown and McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff=d in pert. part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995). As employer does not otherwise contest the amount of the fee awarded, we affirm the administrative law judge=s fee award to claimant=s counsel.

Accordingly, the Decision and Order Awarding Attorney=s Fee of the administrative law judge is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge