



BRB No. 18-0204

FOUSSEINI TOUNKARA)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 10/18/2018
)	
GLACIER FISH COMPANY)	
)	
and)	
)	
SEABRIGHT INSURANCE COMPANY)	
)	
Employer/Carrier-Respondent)	DECISION and ORDER

Appeal of the Order Relating to Claimant’s Petition for Costs and Claimant’s Former Counsel’s Petition for Fees and Costs of Adele H. Odegard, Administrative Law Judge, United States Department of Labor.

Fousseini Tounkara, Bronx, New York.

Before: BOGGS, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant, who is without legal representation, appeals the Order Relating to Claimant’s Petition for Costs and Claimant’s Former Counsel’s Petition for Fees and Costs (2012-LHC-00474) of Administrative Law Judge Adele H. Odegard 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 administrative law judge’s award of costs is reviewed to determine if it is arbitrary, capricious, based on an abuse of discretion or not in accordance with law. *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999).

Claimant worked on employer's fishing vessel, the Pacific Glacier. He alleged that his cataracts were caused from exposure to electric arc welding during the course of his employment performing fire watch duties. Claimant was without legal representation at the October 26, 2012 hearing.

In her decision, the administrative law judge found that claimant established coverage under the Act. *See* 33 U.S.C. §902(3). She also determined that claimant was entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his cataracts are related to electric arc welding exposure and that employer did not rebut the presumption. The administrative law judge awarded claimant compensation for temporary total disability, 33 U.S.C. §908(b), from November 8, 2010, and medical benefits, 33 U.S.C. §907. The administrative law judge directed claimant to file an application for costs associated with the claim. Decision & Order Awarding Benefits at 51. The Board affirmed the administrative law judge's decision. *Toukara v. Glacier Fish Co.*, 49 BRBS 89 (2016).

Claimant submitted petitions for costs on June 9 and 30, 2015, seeking reimbursement for copying, postage and faxing costs. Order Relating to Claimant's Petition for Costs and Claimant's Former Counsel's Petition for Fees and Costs (Order) at 2. Employer filed objections to claimant's petitions. *Id.* at 3.

The administrative law judge stated she may award claimant costs as he prevailed on his claim and employer is liable for claimant's counsel's fee.¹ *Id.* at 7. She stated that she would allow documented costs incurred while the case was before the Office of Administrative Law Judges (OALJ) from December 19, 2011 to February 9, 2015, and subsequently-incurred costs related to claimant's preparation of his cost petitions. *Id.* The administrative law judge disallowed claimed costs that were not fully documented, listed the costs she allowed, and noted specific partial deductions for costs that she could not determine were related to the claim. *Id.* at 8, n.15-18. She ordered employer to pay claimant a total of \$1,091.76 in costs. *Id.* at 9.

Claimant appeals the administrative law judge's award of costs. Employer has not filed a response brief.

We reject claimant's contention that the administrative law judge should have awarded all costs claimed. The administrative law judge properly addressed only those costs incurred while the case was before the OALJ. 33 U.S.C. §928(c); *Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001) (en banc); 20 C.F.R. §702.132. Moreover, the

¹ Claimant's former counsel, William Hochberg, withdrew his representation on June 28, 2011, prior to the October 26, 2012 hearing. The administrative law judge awarded him a fee of \$105, representing .30 of an hour at \$350 per hour.

administrative law judge's finding that she would allow only fully documented costs is reasonable, within her discretion, and in accordance with law. *Ezell*, 33 BRBS 19; *see generally Parks v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.*, 202 F.3d 259 (4th Cir. 1999) (table); *Mikell v. Savannah Shipyard Co.*, 24 BRBS 100 (1990), *aff'd on recon.*, 26 BRBS 32 (1992), *aff'd mem. sub nom. Argonaut Ins. Co. v. Mikell*, 14 F.3d 58 (11th Cir. 1994).

Claimant also challenges the denial of postage for documents he mailed to Largo, Florida, asserting that these mailings were to one of employer's defense attorneys, which he states can be confirmed by reference to the service sheet. The administrative law judge disallowed three receipts for postage to Largo, Florida, totaling \$18.90. She found that it is not clear from the record why postage to that location was necessary. Order at 8 n. 15-17. As there is no evidence of record that defense counsel is located in Largo, Florida, we reject claimant's assertion that the administrative law judge abused her discretion in denying these postage costs.

Claimant challenges the denial of his costs for office supplies and photocopying. However, the administrative law judge permissibly denied these claimed expenses based on the absence of documentation, such as receipts.

As claimant is without counsel, we will review the remaining findings adverse to claimant. A comparison of claimant's petitions with the administrative law judge's list of specific awarded costs demonstrates that she did not award all documented costs for the relevant time periods. For the period from December 19, 2011 to February 9, 2015, claimant submitted receipts for postage and fax costs totaling an additional \$87.06 over the costs allowed by the administrative law judge.² For the period after February 9, 2015, the administrative law judge omitted receipts claimant submitted for costs incurred from March 13, 2015 to June 9, 2015, totaling \$114.74.³ Thus, we modify the administrative

² Specifically, claimant provided receipts for postage for mailings to the administrative law judge, the district director, and defense counsel on December 14, 2012, totaling \$20.75, and on November 15, 2013, totaling \$33.75. On March 20, 2012, shortly after the case was transferred to the OALJ, claimant sent correspondence to Seattle, Washington, D.C., New York and Houston totaling \$32.56. The administrative law judge awarded claimant reimbursement for other mailings to these addresses.

³ On February 11, 2015, claimant mailed correspondence to the administrative law judge, the district director, and also to someone in Chicago. Deducting the \$5.75 charge for the mailing to Chicago, as there is no evidence this is litigation-related, claimant is entitled to \$35.25. On March 13, 2015, and April 16, 2015, claimant mailed documents to defense counsel in New Orleans, for which the postage totaled \$23.50 (2 x 11.75). On June

law judge's Order to award claimant for these fully-documented costs an additional \$201.80.

Accordingly, the administrative law judge's Order is modified to award claimant an additional \$201.80 in costs, payable directly to claimant by employer. In all other respects, the administrative law judge's Order is affirmed.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

9, 2015, claimant mailed his initial cost petition. He documented postage totaling \$55.99 to the administrative law judge, the district director, defense counsel, and to his former counsel, Mr. Hochberg, whose office is in Edmunds, Washington.