

SHARYL BUSKEY)
(Widow of CHARLES BUSKEY))
)
 Claimant-Respondent)
)
 v.)
)
 INGALLS SHIPBUILDING,) DATE ISSUED: 09/29/2003
 INCORPORATED)
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Compensation Order – Award of Attorney=s Fees of Charles D. Lee, District Director, United States Department of Labor.

Scott O. Nelson (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Donald P. Moore (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Employer appeals the Compensation Order – Award of Attorney=s Fees (Case No. 6-168989) of District Director Charles D. Lee 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 the challenging party shows it to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Decedent was allegedly exposed to asbestos in the course of his employment for employer. Prior to June 1994, when he was diagnosed with lung cancer, decedent and claimant, his wife, executed settlement agreements with various producers and manufacturers of asbestos. Decedent died from lung cancer on June 26, 1995, and

claimant filed a claim for death benefits under the Act. 33 U.S.C. §909. After decedent=s death, several third-party settlement checks for decedent=s estate, in payment of the previously executed settlements, were deposited in the trust account of claimant=s attorneys, Maples & Lomax. None of the checks was disbursed to decedent=s estate or to claimant. Additionally, Maples & Lomax submitted a proof of claim form in the bankruptcy action of Amatex. Amatex sent Maples & Lomax a check from the Amatex settlement trust for sums due all of the claiming clients of Maples & Lomax. Maples & Lomax returned to Amatex a check for \$480 representing claimant=s share of the settlement proceeds in order not to jeopardize claimant=s Longshore Act claim. Pursuant to a bankruptcy order, on November 15, 2000, Amatex sent Maples & Lomax another settlement check to hold in trust for claimant.

The administrative law judge found that decedent=s death was work-related. He also found that claimant was not a “person entitled to compensation” at the time the releases for the third-party settlements were executed, and thus that Section 33(g), 33 U.S.C. §933(g), did not bar her claim. The administrative law judge further determined that the receipt of the funds from the Amatex trust was not a settlement within the meaning of Section 33(g). Thus, the administrative law judge awarded claimant and her minor son death benefits and funeral expenses. The administrative law judge subsequently awarded claimant=s counsel an attorney=s fee of \$10,973.50.

Employer appealed the award of death benefits, raising issues concerning the cause of decedent=s death and the applicability of Section 33(g). Employer also appealed the administrative law judge=s attorney=s fee award. The Board affirmed the administrative law judge=s award of death benefits and fee award in all respects. *Buskey v. Ingalls Shipbuilding, Inc.*, BRB Nos. 02-0564, 02-0652 (March 24, 2003).

Claimant=s attorney also sought an attorney=s fee from the district director. The district director awarded counsel the entire fee requested, \$3,405, representing 19 hours at \$175 per hour and \$80 in expenses, payable by employer. Employer appeals the district director=s fee award. Claimant responds, urging affirmance. Employer=s sole contention is that, at the time it filed its appeal, the case on the merits was pending and if the Board vacated the award of death benefits, the district director=s fee award also should be vacated. Inasmuch as the Board affirmed the award of death benefits, the district director=s fee award is affirmed. 33 U.S.C. §928.

Claimant=s counsel has filed a petition for an attorney=s fee for work performed in BRB Nos. 02-0564, 02-0652, and 03-0362. Counsel seeks a fee of \$2,625, representing 15 hours of attorney services at an hourly rate of \$175. Employer has not responded to counsel=s fee petition. We award counsel the full fee requested, as the fee is reasonable and commensurate with the necessary work performed in successfully defending the awards of death benefits and attorney=s fees. 20 C.F.R. §802.203(e).

Accordingly, the district director's Compensation Order – Award of Attorney's Fees is affirmed. Claimant's counsel is awarded an attorney's fee of \$2,625 for work performed before the Board. The fee is to be paid by employer directly to claimant's counsel. 33 U.S.C. §928.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge