

R.K.)
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 Claimant-Respondent)
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 v.)
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 JEFFBOAT, LLC) DATE ISSUED: 09/26/2007
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 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Attorney Fee Order of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Melissa M. Olson (Embry & Neusner), Groton, Connecticut, for claimant.

Laurie Goetz Kemp (Woodward, Hobson & Fulton LLP), Louisville, Kentucky, for self-insured employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2006-LHC-00097) of Administrative Law Judge Donald W. Mosser 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 filed a claim for total disability benefits, alleging that his totally disabling respiratory condition is causally related to his employment with employer. Employer denied all liability for disability and medical benefits, responding that claimant's respiratory impairment is caused solely by cigarette smoking. Administrative Law Judge Jansen found that claimant's condition is work-related. Thus, he awarded

claimant ongoing permanent total disability benefits commencing September 20, 1998, as well as medical benefits. 33 U.S.C. §§908(a), 907.

Subsequently, claimant's attorney filed a fee petition for work performed before the administrative law judge seeking a total of \$12,847.67, representing \$10,962 for 42 hours of attorney services at the hourly rate of \$261, \$36.50 representing one-half hour of paralegal services at the hourly rate of \$73, and expenses of \$1,849.17. Employer filed objections to the fee petition, to which claimant replied.

Due to the retirement of Judge Jansen, the fee petition and objections were considered by Administrative Law Judge Mosser (the administrative law judge). He addressed employer's specific objections and, applying the factors enumerated in 20 C.F.R. §702.132, found the requested fee to be reasonable. Accordingly, the administrative law judge awarded claimant's counsel an attorney fee of \$12,846.67, payable by employer.

Employer appeals, urging that the administrative law judge erred in determining the prevailing hourly rate to be paid claimant's attorney. Claimant responds, urging affirmance.

Employer argues the administrative law judge abused his discretion in awarding counsel an hourly rate of \$261, merely because it is her usual hourly billing rate for her Connecticut-based practice. In this regard, employer argues that the awarded rate greatly exceeds that of workers' compensation attorneys in the areas of Indiana and Kentucky, where the claim arose. Employer also argues that, in approving the requested hourly rate, the administrative law judge erred by relying on fee awards in other cases.

We reject employer's contentions. The regulation governing fee awards, 20 C.F.R. §702.132, states, *inter alia*, that "[a]ny fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded..." Pursuant to this regulation, the attorney must state her "normal billing rate." 20 C.F.R. §702.132(a). In this case, the administrative law judge appropriately addressed the regulatory factors on the specific facts of this case, as well as employer's objections, in finding that the requested fee, including the hourly rate of \$261, was reasonable in view of the successful claim.¹ Attorney Fee Order at 2; *Moyer v. Director, OWCP*, 124 F.3d 1378, 34 BRBS 134(CRT) (10th Cir. 1997). Moreover, in determining an

¹ Employer had denied all benefits and claimant was successful in obtaining an ongoing award of permanent total disability benefits of \$580.82 per week dating from September 20, 1998.

appropriate hourly rate an administrative law judge may reference fee awards entered in other cases. *Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004). Therefore, as the administrative law judge adequately addressed the relevant factors and employer has not shown that the administrative law judge abused his discretion in awarding the attorney's fee requested, including an hourly rate of \$261, we affirm the fee award of \$12,846.67. *See generally Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001).

Accordingly, the administrative law judge's Attorney Fee Order is awarded.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge