



BRB No. 14-0400

CATHY McDONALD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NAVY EXCHANGE SERVICE	)	
COMMAND	)	DATE ISSUED: <u>Sept. 21, 2015</u>
	)	
and	)	
	)	
ABERCROMBIE, SIMMONS & GILLETTE	)	
	)	
Self-Insured	)	ORDER on
Employer/Administrator-	)	RECONSIDERATION
Respondents	)	

Claimant has filed a timely motion for reconsideration of the Board's Decision and Order in the captioned case, *McDonald v. Navy Exchange Service Command*, BRB No. 14-0400 (July 27, 2015). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer responds, opposing the motion. For the reasons stated herein, we grant claimant's motion and modify our decision.

In his motion for reconsideration, counsel contends that the Board erred by not modifying the administrative law judge's attorney's fee award to include an additional \$2,440 in fees, representing 8 hours of time at the hourly rate of \$305, which, he alleges, was inappropriately disallowed by the administrative law judge.

Counsel is correct in noting that the administrative law judge explicitly disallowed 8 of the 16 hours claimed for Dr. Costa's deposition and, thereafter, also summarily sustained employer's objections amounting to a total of "another 107.95 hours" set forth at pages 6 through 9 of its opposition brief. Attorney Fee Order at 10. Counsel also correctly states that the disallowed 107.95 hours include the 16 hours claimed by counsel on October 19, 2011, relating to the deposition of claimant's treating physician, Dr. Costa. See Emp's Objection at 7. Review of the administrative law judge's decision thus reflects that while he explicitly awarded counsel a fee for 8 hours relating to Dr. Costa's deposition, he nevertheless also denied the entire 16 hours claimed by counsel for such work. In light of this inconsistency, we modify our decision to reflect counsel's entitlement to a fee for 8 hours of work on Dr. Costa's deposition which the

administrative law judge approved, but did not include, in his award of an attorney's fee. The administrative law judge's Attorney Fee Order is therefore modified to reflect the inclusion of an additional \$2,440 in attorney's fees, representing 8 hours of attorney work at an hourly rate of \$305, payable by employer, for work performed on Dr. Costa's deposition.

Accordingly, claimant's motion for reconsideration is granted. 20 C.F.R. §802.409. The Board's decision is modified to reflect inclusion of 8 hours for work relating to the October 19, 2011 deposition of Dr. Costa, which was approved by the administrative law judge but not previously included in his fee award. In all other respects, the Board's Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge