

BARBARA FRANCIS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DEPARTMENT OF THE ARMY	)	DATE ISSUED:
	)	
and	)	
	)	
ALEXSIS, INCORPORATED	)	
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of G. Marvin Bober, Administrative Law Judge, United States Department of Labor.

Paul H. Felser (Portman & Felser), Savannah, Georgia, for claimant.

Elisa A. Roberts (Hamilton, Westby, Marshall & Antonowich, L.L.C.), Atlanta, Georgia, for employer/carrier.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (93-LHC-1889, 93-LHC-2542, 94-LHC-1660, 94-LHC-1661) of Administrative Law Judge G. Marvin Bober rendered on claims filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and may be set aside only if the

challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. See, e.g., *Muscella v. Sun Shipbuilding and Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed several claims for compensation under the Act, and employer responded by making a request for Section 8(f) relief, 33 U.S.C. §908(f). In his Decision and Order Awarding Benefits and Granting Section 8(f) Relief dated August 3, 1995, the administrative law judge determined that claimant is entitled to permanent total disability benefits from April 7, 1994, and medical benefits. In addition, the administrative law judge determined that employer is entitled to Section 8(f) relief. Claimant's counsel then filed before the administrative law judge an Application for Attorney Fees, requesting a total of \$38,460.16, representing 198 hours of services rendered at a rate of \$175 per hour, plus \$3,810.16 in expenses. Employer filed an objection to the fee petition, arguing that claimant's attorney is not entitled to a fee payable by employer on issues relating solely to Section 8(f), and that no award of compensation was entered. Employer also contended that as it voluntarily paid claimant temporary total disability, claimant did not obtain additional benefits.

In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge considered employer's objections, but found that, while employer was correct that claimant is not entitled to a fee for work on Section 8(f) issues, claimant here also successfully pursued his disability claims. Thus, the administrative law judge concluded that inasmuch as he had awarded claimant permanent total disability benefits, claimant's counsel was entitled to an attorney's fee payable by employer. The administrative law judge ordered employer to pay claimant's counsel a fee of \$26,743.91, representing 131.05 hours of services at \$175 per hour, plus the requested expenses.

On appeal, employer challenges the administrative law judge's award of an attorney's fee, contending that the merits of claimant's claims have not been adjudicated and thus, there has been no successful prosecution of any of claimant's claims. Employer contends the administrative law judge adjudicated only its claim for Section 8(f) relief, and that claimant's counsel is not entitled to a fee for work done on Section 8(f) issues. Employer thus requests that the Supplemental Decision and Order Awarding Attorney Fees be reversed. Claimant's counsel responds, urging affirmance of the Supplemental Decision and Order Awarding Attorney Fees. Employer has also filed a reply brief reiterating its position in this case.

We reject employer's contention. The parties stipulated before Judge Bober that claimant is permanently totally disabled effective April 7, 1994, and that her average weekly wage is \$184.58. In his Decision and Order, the administrative law judge initially noted that "[a]t issue here is employer/carrier's petition for Section 8(f) relief," Decision and Order dated August 3, 1995, at 1. He then found that employer has satisfied the criteria for application of Section 8(f). In the order portion of his decision he ordered employer to pay claimant permanent total disability benefits at the stipulated rate for 104 weeks after which

the Special Fund will assume liability. He also awarded claimant medical benefits. Specifically, the administrative law judge stated that “as employer/carrier has agreed that claimant is permanently and totally disabled and is therefore entitled to benefits, I find that claimant should also be reimbursed for reasonable and necessary medical expenses incurred as a result of her employment-related injuries.” Decision and Order dated August 3, 1995, at 5. In addition, the administrative law judge found claimant entitled to reasonable and necessary future medical expenses related to her injuries. *Id.* As the award of compensation and medical benefits to claimant is contained in a compensation order, 20 C.F.R. §702.348, we reject employer’s contention that only its claim for Section 8(f) relief was resolved by Judge Bober.

Moreover, the record establishes that the administrative law judge's Decision and Order was filed by the district director on August 16, 1995, and served on the parties on that date. 20 C.F.R. §702.349. Inasmuch as employer did not appeal the administrative law judge's decision awarding benefits, his compensation order is final, and therefore, not subject to review by the Board through an appeal of a collateral order.<sup>1</sup> See 33 U.S.C. §921(a), 20 C.F.R. §702.350; see generally *Jeffboat, Inc. v. Mann*, 875 F.2d 660, 22 BRBS 79 (CRT)(7th Cir. 1989). In light of this decision, we hold that since there has been a successful prosecution of claimant’s claim for benefits, the administrative law judge properly held that claimant’s counsel is entitled to an attorney’s fee payable by employer, as claimant’s attorney’s fee request is not solely based on time relating to Section 8(f) issues.<sup>2</sup> See *Monaghan v. Portland Stevedoring Co.*, 11 BRBS 190 (1979). Moreover,

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<sup>1</sup>If employer believed Judge Bober improperly awarded claimant benefits, its remedy was to appeal the decision within 30 days of the date it was filed. 33 U.S.C. §921(a).

<sup>2</sup>In its objections to the fee filed with the administrative law judge, employer also argued that there was no successful prosecution because it paid claimant temporary total disability at all times. This contention is not raised on appeal. Moreover, from claimant’s response and employer’s reply briefs to the Board, it appears as if there was an interruption in the payment of benefits to claimant prior to the parties’ agreement that claimant is permanently totally disabled. See *Boland Marine & Manufacturing Co. v. Rihner*, 41 F.3d 997, 29 BRBS

since employer has not raised any specific contentions regarding the amount of the attorney's fee awarded, we affirm the administrative law judge's award of attorney's fees in this case totaling \$26,743.91, payable by employer. 33 U.S.C. §928(a), (b); see generally *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Corcoran v. Preferred Stone Setting*, 12 BRBS 201 (1980).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is affirmed.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

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43 (CRT) (5th Cir. 1995), *aff'g* 24 BRBS 84 (1990). Thus, the fact that employer also obtained Section 8(f) relief does not negate its liability for claimant's attorney's fee. *Finch v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 196 (1989).