

BRB Nos. 96-1715  
and 97-0268

MARK S. NORENE )  
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 Claimant-Respondent )  
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 v. )  
 )  
 WEST STATE INCORPORATED ) DATE ISSUED:  
 )  
 and )  
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 SAIF CORPORATION )  
 )  
 Employer/Carrier- )  
 Petitioners ) DECISION and ORDER

Appeals of the Order for Fees and Costs of Henry B. Lasky, Administrative Law Judge, United States Department of Labor and the Compensation Order - Approval of Attorney Fee Application of Karen P. Staats, District Director, United States Department of Labor.

Bruce A. Bottini (Bottini, Bottini & Oswald, P.C.), Portland, Oregon, for claimant.

Norman Cole (SAIF Corporation), Salem, Oregon, for employer/carrier.

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

PER CURIAM:

Employer appeals the Order for Fees and Costs (95-LHC-1766) of Administrative Law Judge Henry B. Lasky and the Compensation Order - Approval of Attorney Fee Application (Case No. 14-105460) of District Director Karen P. Staats 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).<sup>1</sup> 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 & Dry Dock Co.*, 12 BRBS 272 (1980).

<sup>1</sup>By Order dated November 14, 1996, employer's appeal of the district director's Order, BRB No. 97-0268, was consolidated for purposes of decision with its appeal of the administrative law judge's fee award, BRB No. 96-1715.

Claimant, a marine machinist foreman, was injured on February 13, 1991, during the course of his employment with employer. Employer voluntarily paid claimant disability compensation, but disputed claimant's average weekly wage and residual wage-earning capacity. Subsequent to the administrative law judge's determinations on these issues and his award of benefits, claimant's attorney submitted fee petitions to both the district director and the administrative law judge; employer filed objections to both of these petitions. In his Order for Fees and Costs, the administrative law judge awarded claimant's counsel a fee of \$20,587.95, representing 91.8 hours of services at \$150 per hour and costs of \$5,617.95, plus an additional \$1,200, representing 8 hours at \$150 per hour arising out of claimant's answering employer's objections to his fee petition. In her Order - Approval of Attorney Fee Application, the district director awarded a fee of \$4,500, representing 30 hours of services rendered at \$150 per hour.

Employer now appeals these attorney fee awards, arguing that both the administrative law judge and district director erred by failing to adequately address the failure of claimant's attorney to either specifically delineate the attorney involved in rendering each service or to provide a detailed itemization of the services and by failing to fully reduce the hours requested based on whether they arose out of work involving successful or non-successful issues. Additionally, employer contends that the administrative law judge erred in awarding claimant's attorney a fee for work performed in defense of his fee petition. Claimant responds, urging affirmance of both decisions.

Employer initially argues that both the district director and administrative law judge erred in awarding fees since the fee petitions submitted by counsel lack the necessary specificity, since each fails to identify the specific attorney performing the work and his status in the firm. Contrary to employer's argument, Section 702.132 imposes no such requirement, stating only that the petition "must describe...with particularity...the professional status (e.g., attorney, law clerk, or other person assisting an attorney) of each person performing...work." 20 C.F.R. §702.132. Therefore, we affirm the administrative law judge's and the district director's acceptance of counsel's occupational description of the individuals who performed services on claimant's behalf. See *Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988).

Employer next asserts that counsel's fee petitions were insufficiently specific with regard to certain costs and services.<sup>2</sup> We hold, however, that in light of the generally well-detailed nature of the petition, it was not impossible for the factfinders to determine whether those costs and services were necessary. See *Forlong*, 21 BRBS at 155 (1988).

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<sup>2</sup>We note that employer urges the Board to adopt the holdings of the United States Court of Appeals for the Fifth Circuit regarding incremental billing methods. See *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table); *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990). As this specific argument was not raised below, we decline to address it for the first time on appeal. See *Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995).

Next, employer objects to the award of specific hours which it alleges were spent on issues that either resulted in no additional gain to claimant or were conceded prior to the hearing. This contention was specifically addressed below and counsel's preparation was found to be reasonable, necessary, and essential despite the fact that certain contested issues were resolved by stipulation at the outset of the formal hearing. Employer's assertions on appeal are insufficient to meet its burden of proving that the factfinders abused their discretion in this regard. See *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1991).

Employer also objects to the hourly rates awarded to counsel. In the present case, the administrative law judge and district director considered employer's objections to the fee requested by claimant's counsel, but declined to reduce the \$150 hourly rate sought. Employer contends that the hourly rate awarded was in excess of reasonable and customary charges in the geographical area where this claim arose. The factfinders, however, specifically determined that the requested hourly rate was not excessive and was reasonable and appropriate in the geographic locality involved. As employer provides no support for its allegation that this rate is excessive, we hold that employer has not met its burden of showing that the hourly rate awarded is unreasonable. See *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Finally, employer objects to the administrative law judge's award of a fee to counsel for time rendered in defense of his fee petition. We reject this contention, as it was fully considered by the administrative law judge and the hours requested determined to be reasonable in light of the multiple objections raised by employer. We, therefore, affirm the administrative law judge's award of a fee for this defense.

Lastly, claimant's counsel seeks an attorney's fee award of \$2,025, representing 13.5 hours of services at \$150 per hour, for work performed before the Board. Claimant's counsel is entitled to an attorney's fee payable by employer since he successfully defended employer's appeals. See generally *Lewis v. Todd Pacific Shipyards Corp.*, 30 BRBS 154 (1996). However, counsel's mere statement that the number of hours requested were "to review [employer's] Petition for Review & Brief, perform legal research, and draft this Respondent's Brief..." see Brief 97-0268 at 5; Brief 96-1715 at 12, lacks the necessary specificity to support a fee award at this time, since an attorney's fee award cannot be made without the filing of an application which conforms to the requirements of 20 C.F.R. §802.203. See *Olson v. Healy Tibbitts Construction Co.*, 22 BRBS 221 (1989). Accordingly, claimant's request for an attorney's fee is denied at this time.

Accordingly, the administrative law judge's Order for Fees and Costs and the district director's Compensation Order are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge