

NED R. NONIS)	
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Claimant-Petitioner)	
)	
v.)	
)	
NORFOLK SHIPBUILDING AND)	DATE ISSUED:
DRYDOCK CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fee of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Rutter & Montagna, L.L.P), Norfolk, Virginia, for claimant.

Robert E. Rapaport and Lynne M. Ferris (Knight, Dudley, Clarke & Dolph, P.L.C.), Norfolk, Virginia, for self-insured employer.

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

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fee (95-LHC-2394 & 96-LHC-898) of Administrative Law Judge Fletcher E. Campbell, Jr., 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 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).

Claimant sought compensation and medical benefits under the Act for right arm and shoulder injuries he sustained while working for employer on June 9, 1992. On March 12, 1996, after the case had been referred to the Office of Administrative Law Judges, claimant's counsel requested that the case be remanded to the district director as the parties had come to an agreement regarding the compensation due. On April 3, 1996, the administrative law judge issued an Order remanding the case. On April 15, 1996, claimant's counsel submitted a fee petition requesting \$2,927.50, representing 22.5 hours of services

performed by various individuals at various rates for work performed before the Office of Administrative Law Judges. On May 10, 1996, the administrative law judge issued an Order To Clarify Attorney Fee Petition, in which he directed claimant's counsel to amend his prior fee petition to reflect greater specificity. Relevant to the current appeal, in this Order the administrative law judge directed counsel to provide a name or description sufficient to allow the administrative law judge to determine whether inadvertent multiple entries were made, or whether they were listed accurately, if multiple consecutive entries bearing the same description and date were listed. Counsel was also directed to describe "receipt of all correspondence" with sufficient particularity so as to be clearly identifiable, and to limit the services claimed to those performed before the administrative law judge. On August 27, 1996, claimant submitted an amended fee petition in which he requested an attorney's fee of \$2,775, representing 21 hours at varying hourly rates¹ for work performed before the administrative law judge in connection with claimant's claim.

In a Supplemental Decision and Order dated September 26, 1996, the administrative law judge disallowed the time claimed on July 10, 1995 for receipt of forms LS-207 and LS-209 as duplicative; the time claimed on July 13, 1995 and November 26, 1995 because it involved work performed before the Virginia Workers' Compensation Commission, and the October 10 and 13, 1995, entries involving photocopying as clerical. In addition, he reduced 29 entries for receipt of and transmittal of general correspondence billed at one-quarter of an hour to one-eighth of an hour,² reasoning that despite having been provided with an opportunity to supplement and clarify the information needed to allow the administrative law judge to make a fair judgment on the fee petition, claimant's counsel failed to do so. In addition, the administrative law judge found that the maximum acceptable hourly rate for attorney work in the Tidewater area was \$150 and reduced the hourly rates requested for work performed by Attorney Rosen accordingly. Moreover, he disallowed all entries prior to the claim's referral to the Office of Administrative Law Judges, and reduced the time requested for all telephone calls from one-quarter to one-eighth of an hour in light of counsel's failure to adequately detail the nature of the calls. Accordingly, he awarded claimant's counsel a fee of \$1,740, representing 12.875 hours of attorney services based on hourly rates varying from \$125 to \$150 per hour, indicating that the amount

¹The following hourly rates were requested: Attorney Gregory Camden, \$125 for work performed pre-1996 and \$140 thereafter; Attorney Dana Adler Rosen, \$155 pre-1996, \$170 thereafter; \$55 for paralegal work pre-1996, \$63 thereafter.

² Eighteen of these entries had been billed at \$125 per hour, and eleven had been billed at \$140 per hour.

awarded was reasonable in light of the issues involved, the quality of the representation, the risk of loss, and other relevant factors. On appeal, claimant challenges the reductions in the attorney's fee petition ordered by the administrative law judge. Employer responds, urging affirmance.

On appeal, claimant specifically contends that the administrative law judge abused his discretion in reducing all of the one-quarter hour entries claimed in his fee petition for general correspondence and phone calls to one-eighth of an hour based on his determination that counsel's fee petition was not adequately detailed. Claimant avers that, contrary to the administrative law judge's determination, the fee petition submitted by counsel was sufficiently detailed to comply with the regulatory criteria of 20 C.F.R. §702.132 as the Board has previously approved of minimum quarter-hour billing. While recognizing that the United States Court of Appeals for the Fifth Circuit held in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table), that minimum quarter-hourly billing was not acceptable where less time was actually expended, claimant avers that the charges submitted here are clearly reasonable. Moreover, he avers that the administrative law judge erred in reducing Ms. Rosen's hourly rate to \$150, and in disallowing the time claimed for receipt of Forms LS-207 and LS-209 on July 10, 1995 as duplicative because these forms were in fact received by claimant's counsel twice.³

The administrative law judge's award of attorney's fees is affirmed. As claimant avers, the Board previously recognized in *Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986), that billing in quarter-hour increments is in compliance with 20 C.F.R. §702.132. *Cf. Bullock v. Ingalls Shipbuilding, Inc.*, 29 BRBS 131 (1995)(decision on remand *en banc*)(different standard applicable in Fifth Circuit). On the facts presented, however, as claimant's counsel was specifically directed by the administrative law judge in his Order to Clarify Fee Petition to describe the phone calls and correspondence received with sufficient detail as to be clearly identifiable, yet failed to do so, it can not be said that in the absence of such information the administrative law judge abused his discretion in reducing the one-quarter hour entries claimed for general correspondence and phone calls to one-eighth of an hour. After considering claimant's remaining arguments relating to the number of hours awarded, and to the reduction in attorney Rosen's hourly rate, we reject these contentions, as he has not shown that the administrative law judge abused his discretion in this regard. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

³Claimant maintains that the LS-207 and LS-209 forms he received on July 6, 1995 were the original copies from employer and that the LS-207 and LS-209 forms he received on July 10, 1995 were copies from the Department of Labor.

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

SO ORDERED.

BETTY JEAN HALL
Chief Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge