

BRB No. 97-0731

RAY D. HYDE)	
)	
Claimant-Respondent)	
)	
v.)	
)	
HEALY TIBBITTS BUILDERS, INCORPORATED)	DATE ISSUED:
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Order Partially Granting and Partially Denying Motion for Reconsideration of Paul A. Mapes, Administrative Law Judge, United States Department of Labor.

Jay Lawrence Friedheim, Honolulu, Hawaii, for claimant.

Robert G. Frame and Kitty K. Kamaka (Alcantara & Frame), Honolulu, Hawaii, for self-insured employer.

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

PER CURIAM:

Employer appeals the Order Partially Granting and Partially Denying Motion for Reconsideration (95-LHC-1306, 1307) of Administrative Law Judge Paul A. Mapes 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).¹ The amount of an attorney's fee 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).

¹We hereby deny claimant's request, contained in a letter dated September 4, 1997, that the instant case be consolidated for purposes of decision with employer's appeal in *Hyde v. Healy Tibbitts Builders, Inc.*, BRB No. 97-1761.

The sole issue raised by employer on appeal is whether the administrative law judge erred in awarding an hourly rate of \$100 for services rendered by Edward F. Ducey, an individual in the employ of claimant's counsel's law firm.

The facts of this case are not in dispute. Claimant suffered work-related injuries to his knee on July 7, 1993, and again on March 25, 1994, when claimant attempted to return to work. Thereafter, claimant filed a claim for benefits under the Act. In his Decision and Order Awarding Benefits, dated April 9, 1996, the administrative law judge awarded claimant temporary total disability compensation from July 21, 1993 through October 19, 1994, with the exception of March 25, 1994. In addition, after finding that claimant suffered a 24 percent permanent partial disability to his left leg, the administrative law judge awarded claimant permanent partial disability compensation pursuant to Section 8(c)(2) of the Act, 33 U.S.C. §908(c)(2), for 69.12 weeks, commencing on October 20, 1994, at a weekly compensation rate of \$341.68.

Subsequent to the administrative law judge's Decision and Order, claimant's counsel sought an attorney's fee of \$17,890, representing 96.8 hours of legal services performed at \$150 per hour by counsel, 33.7 hours of services performed at \$100 per hour by Edward F. Ducey, and \$255.30 in expenses. Thereafter, employer filed objections to the fee petition. In a Supplemental Decision and Order, the administrative law judge considered employer's specific objections to the fee request, approved the requested hourly rates, reduced the hours sought for services performed by Mr. Ducey to 12.15, reduced the hours sought for work by counsel to 79.56, and thereafter awarded claimant's counsel an attorney's fee of \$13,149, plus \$121.95 in expenses, and an additional fee of \$1,050 for the time spent in responding to employer's objections. After employer filed a motion for reconsideration, the administrative law judge issued an Order Partially Granting and Partially Denying Motion for Reconsideration, wherein the administrative law judge found that 11.7 of the 20.2 hours found to be duplicative should be assessed at Mr. Ducey's hourly rate, with the remainder of the time being assessed at claimant's counsel's hourly rate. Additionally, the administrative law judge rejected employer's request for an *in camera* inspection of claimant's counsel's billing records, and reaffirmed his awarded hourly rate for the work performed by Mr. Ducey. Thus, the administrative law judge reduced the attorney's fee awarded to claimant's counsel from \$13,149 to \$12,564.

On appeal, employer challenges the attorney's fee awarded by the administrative law judge; specifically, employer argues that the hourly rate awarded by the administrative law judge for work performed by Mr. Ducey is excessive. Claimant responds, urging affirmance of the administrative law judge's fee award.

Employer maintains that the hourly rate of \$100 awarded by the administrative law judge for work performed by Mr. Ducey is not commensurate with the hourly rate paralegals are normally awarded, and thus is tantamount to compensating a lay representative at the same rate as a licensed attorney, in violation of Section 28 of the Act, 33 U.S.C. §928. We disagree. It is well-established that an administrative law judge may award fees at the appropriate rate for work performed by non-lawyers if it is work usually performed by

attorneys. See *Quintana v. Crescent Wharf and Warehouse Co.*, 18 BRBS 254 (1986); 20 C.F.R. §702.132. In the instant case, the administrative law judge initially awarded claimant's counsel an hourly rate of \$150, finding that such a rate is commensurate with fees awarded for longshore cases in cities on the west coast. See Supplemental Decision and Order Awarding Attorney's Fees at 2. This determination is not challenged on appeal. Next, after considering employer's objection to the requested hourly rate for work performed by Mr. Ducey, the administrative law judge noted that Mr. Ducey had been the district director in charge of the Office of Workers' Compensation Programs Honolulu office from 1968 to 1992, and that, thus, Mr. Ducey's experience in handling cases arising under the Act was so extensive that an hourly rate of \$100 was not unreasonable. *Id.* The administrative law judge thereafter reaffirmed this determination in his Order Partially Granting and Partially Denying Motion for Reconsideration, stating "Mr. Ducey's knowledge of the intricacies of the Longshore Act exceeds that of many attorneys who practice before the Office of Administrative Law Judges, and he should be compensated for that expertise at a commensurate rate, not at a rate which would be appropriate for a person with far lesser skills and knowledge." See Order at 2. As the awarded hourly rate awarded to Mr. Ducey is less than the hourly rate awarded to claimant's counsel, we reject employer's assertion that the administrative law judge violated Section 28 of the Act by compensating Mr. Ducey at the same rate as a licensed attorney. See *Todd Shipyards Corp. v. Director, OWCP*, 545 F.2d 1176, 5 BRBS 23 (9th Cir. 1976).² Moreover, the administrative law judge specifically addressed employer's objections at length in his two fee decisions, and employer has not satisfied its burden of showing that the administrative law judge abused his discretion in awarding an hourly rate of \$100 for work performed by Mr. Ducey. Accordingly, we affirm the administrative law judge's hourly rate determination in this case. 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).

²In *Todd Shipyards*, the United States Court of Appeals for the Ninth Circuit vacated an attorney's fee award which did not indicate how the fee was to be broken down between the claimant's attorney of record and a lay representative. Holding that compensating a lay representative at the same rate as a licensed attorney violates Section 28 of the Act, the court remanded the case for the Board to determine a reasonable and customary compensation for counsel's paralegal assistants, noting that "[o]ne of the necessary incidents of an attorney's fee is the attorney's maintaining of a competent staff to assist him." *Todd Shipyards*, 545 F.2d at 1182, 5 BRBS at 29.

Accordingly, the Order Partially Granting and Partially Denying Motion for Reconsideration of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL
Chief Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge