

R.S.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NATIONAL RURAL ELECTRIC)	DATE ISSUED: 08/13/2007
COOPERATIVE ASSOCIATION)	
)	
and)	
)	
ACE/CIGNA)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Attorney Fee Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Jerald D. Harris (Harris & Burgin), Cincinnati, Ohio, for claimant.

Richard L. Garelick (Flicker, Garelick & Associates, LLP), New York, New York, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Attorney Fee Order (2004-LHC-2245) of Administrative Law Judge Joseph E. Kane rendered on claim 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 Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant was injured on August 28, 1995, while working on a rural electrification project in Dacca, Bangladesh, when he fell down stairs, injuring his back and hip. As a

result of the fall, claimant suffered a disc herniation at the L5-S1 and L4-5 levels as well as aggravation of his pre-existing degenerative arthritis in his right hip.

The parties separately settled claimant's disability and discrimination claims, but did not resolve any issues with regard to an attorney's fee. Claimant's counsel subsequently submitted to the administrative law judge a petition seeking \$51,710.93 in fees and costs.¹ Employer filed objections to the fee petition.

In his Attorney Fee Order, the administrative law judge found that claimant's fee application failed to comply with the applicable regulation, 20 C.F.R. §702.132(a). The administrative law judge found that the fee petition, in the form of a computer printout, failed to describe the status of each person performing each task or the regular hourly rate for legal services, to separate work performed before the district director from that performed before the administrative law judge, to distinguish between work performed on the separate disability and discrimination claims, or to document expenses. Accordingly, he denied the fee petition, stating counsel could remedy the problems by filing a conforming fee petition within 30 days.

Claimant appeals the administrative law judge's order and submits to the Board documents intending to bring his fee petition into compliance with the regulation. Employer responds that claimant's submission should not be considered by the Board and that the administrative law judge's Order should be affirmed.

The regulation at 20 C.F.R. §702.132(a) states, in pertinent part,

the application shall be supported by a complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing such work, the normal billing rate for each such person, and the hours devoted by each such person to each category of work. . . .

On appeal, counsel does not dispute the administrative law judge's finding that his fee petition did not satisfy these requirements. Instead of filing with the administrative law judge an amended fee petition which complied with the regulation, as suggested by the administrative law judge, counsel has filed the amended petition with the Board. The Board, however, cannot address documents which were not first submitted to the

¹ Claimant's attorney sought a fee of \$44,700, representing 111.75 hours at \$400 per hour, \$5,700, representing 76 hours at \$75 hours for paralegal services, plus expenses of \$1,310.93.

administrative law judge nor can it address in the first instance the amount of an attorney's fee award for work performed before the administrative law judge. *See* 33 U.S.C. §928(c); *Smith v. Alter Barge Line, Inc.*, 30 BRBS 87 (1996); *Revoir v. General Dynamics Corp.*, 12 BRBS 524 (1980). An amended fee petition must be filed with the administrative law judge in order for claimant to receive consideration of his fee request.

Accordingly, the administrative law judge's Attorney Fee Order denying a fee on the previously filed fee petition is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge