

D.H. )  
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 Claimant-Petitioner )  
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 v. )  
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 ATLANTIC CONTAINER SERVICES ) DATE ISSUED: 08/12/2008  
 )  
 and )  
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 SIGNAL MUTAL INDEMNITY )  
 ASSOCIATION )  
 )  
 Employer/Carrier- )  
 Respondents ) DECISION and ORDER

Appeal of the Order Awarding Attorney and Paralegal Fees of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

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

G. Mason White and James D. Kreyenbuhl (Brennan, Harris & Rominger LLP), Savannah, Georgia, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Order Awarding Attorney and Paralegal Fees (2006-LHC-02015) of Administrative Law Judge Alan L. Bergstrom 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 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. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a hearing loss claim based on an audiogram administered on April 16, 2006. Employer controverted the claim but subsequently agreed that, in lieu of a formal hearing, it would pay permanent partial disability benefits and medical benefits for claimant's hearing loss. The administrative law judge thus remanded the case to the district director for the entry of an award. Thereafter, claimant's counsel submitted an attorney's fee petition for work performed before the administrative law judge. Counsel sought an attorney's fee totaling \$6,473.94, representing 20.92 hours of attorney work at an hourly rate of \$300, 3 hours of paralegal work at an hourly rate of \$95, and costs of \$417.44, which specifically included \$183.44 in travel expenses. Employer filed objections to counsel's fee petition. Subsequently, claimant's counsel requested an additional fee of \$525 for responding to employer's objections.

In his Order Awarding Attorney and Paralegal Fees, the administrative law judge found that counsel is not entitled to a fee for time spent traveling between his office in Norfolk, Virginia and Savannah, Georgia, the area where claimant resided. The administrative law judge also disallowed or reduced a number of other specific entries, and he found that claimant's counsel is entitled to a fee for 13.4 hours of attorney services, 3 hours in brief writing services, and 2 hours of paralegal service. The administrative law judge approved the hourly rates of \$300 for attorney services, \$125 for brief writing services, and \$95 for paralegal services as they are appropriate in the Savannah, Georgia, area for the level of service provided. Lastly, the administrative law judge disallowed the \$183.44 counsel requested for travel expenses as he found that the October 30, 2006, expense entry lacked the specificity necessary to establish that the expenses were in excess of those that should be included in counsel's overhead. Therefore, the administrative law judge awarded claimant's counsel a fee in the amount of \$4,824, including expenses in the amount of \$234, payable by employer.

On appeal, claimant's counsel contends that the administrative law judge erred in denying the amount requested for travel expenses, \$183.44, as it is reasonable and was necessary for the prosecution of this case. Employer responds, urging affirmance of the administrative law judge's decision.

Claimant's counsel practices in the Norfolk, Virginia area and the formal hearing was scheduled in Savannah, Georgia, where claimant resided. Claimant's counsel avers that the administrative law judge erred in disallowing the \$183.44 billed for "travel expenses." The administrative law judge disallowed this expense because the fee petition lacked sufficient specificity for the administrative law judge to ascertain whether the expense exceeded that which would be included as an overhead expense. Order at 4, 9. *See, e.g., O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39 (2000). We affirm this finding, as counsel has not established that the administrative law judge abused his discretion in this regard. 33 U.S.C. §928(d); *see Richardson v. Continental Grain Co.*,

336 F.3d 1103, 37 BRBS 80(CRT) (9<sup>th</sup> Cir. 2003) (claimant bears burden of showing entitlement to an attorney's fee); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (where documentation is inadequate, fee award may be reduced). *See generally Baumler v. Marinette Marine Corp.*, 40 BRBS 5 (2006); *Parks v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.*, 202 F.3d 259 (4<sup>th</sup> Cir. 1999) (table). Therefore, we affirm the denial of the claimed travel expenses.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge