

A.D.)
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 Claimant-Respondent)
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 v.)
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 INGALLS SHIPBUILDING,) DATE ISSUED: 08/28/2008
 INCORPORATED)
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 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees of David A. Duhon, District Director, United States Department of Labor.

Billy Wright Hilleren (Hilleren & Hilleren, L.L.P.), Evergreen, Louisiana, for claimant.

Susan F. E. Bruhnke and Donald P. Moore (Franke & Salloum, P.L.L.C.), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney's Fees (Case No. 07-173407) of District Director David A. Duhon 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. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant sustained injuries to his head, neck and back while working for employer on February 16, 2005. Employer voluntarily paid claimant temporary total disability benefits from February 28, 2005 to August 28, 2005, based on an average weekly wage of \$598.56, and medical benefits. Thereafter, a dispute developed over claimant's

entitlement to ongoing disability benefits. Claimant filed a claim for additional compensation on January 9, 2006, which employer controverted on January 31, 2006. As the parties were unable to resolve the issues regarding claimant's average weekly wage and post-injury wage-earning capacity at the informal conference, the case was referred to the Office of Administrative Law Judges for a formal hearing.¹

The administrative law judge determined, in agreement with claimant's position, that claimant's average weekly wage was \$739.38. He further found, contrary to claimant's position, that claimant had a post-injury loss of wage-earning capacity only until December 31, 2005; the administrative law judge therefore found that claimant was entitled to temporary partial disability benefits from February 16, 2005 to December 31, 2005, but that he was not entitled to disability benefits after that time. As a result of the administrative law judge's Decision and Order, claimant received an additional \$7,907.85 in disability benefits.

Claimant's counsel subsequently submitted a fee petition to the district director requesting a fee of \$4,223.53, representing 19.825 hours at an hourly rate of \$200, and \$258.53 in costs. In his Compensation Order, the district director, after addressing employer's objections to counsel's fee request, awarded claimant's attorney a fee in the amount of \$3,838.53, representing 17.9 hours at the requested hourly rate of \$200, and \$258.53 in costs, to be paid by employer.²

On appeal, employer challenges the district director's approval of the requested hourly rate of \$200 and his failure to reduce the fee on the basis of claimant's limited success. Claimant responds, urging affirmance of the district director's fee award.

We reject employer's contention that the district director erred in approving the \$200 hourly rate requested by claimant's attorney. The applicable regulation at Section 702.132, 20 C.F.R. §702.132, provides that the award of an attorney's fee shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues, and the amount of benefits awarded. *See generally Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *see also Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n.*, 22 BRBS 434 (1989). In considering

¹At the informal conference, employer agreed to pay for three prescribed medications which it previously had denied.

² The district director disallowed 1.925 hours itemized between September 14, 2006 and November 1, 2006.

counsel's fee request, the district director determined that the \$200 hourly rate requested by claimant's counsel is "within the usual and customary rates being awarded in cases of this nature in this geographic region." Comp. Order at 2. As employer has not satisfied its burden of showing that the district director abused his discretion in awarding a fee based on this determination, we affirm the hourly rate awarded. *See generally McKnight v. Carolina Shipping Co.*, 32 BRBS 251, 253 (1998) (decision on recon. *en banc*).

Next, employer avers that the district director erred by failing to reduce counsel's requested fee on the basis of claimant's limited success.³ In this regard, employer avers that claimant was not successful with respect to the issue of his post-injury wage-earning capacity and, ultimately, claimant obtained less than \$8,000 in additional compensation. The United States Supreme Court has held that a fee award under a fee-shifting scheme should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on litigation. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983); *see also George Hyman Constr. Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161(CRT) (D.C. Cir. 1992); *General Dynamics Corp. v. Horrigan*, 848 F.2d 321, 21 BRBS 73(CRT) (1st Cir.), *cert. denied*, 488 U.S. 997 (1988). If the claimant achieves only partial or limited success, the fee award should be for an amount that is reasonable in relation to the results obtained. *Hensley*, 461 U.S. at 435-436. The courts have recognized the broad discretion of the factfinder in assessing the amount of an attorney's fee pursuant to *Hensley* principles. *Id.* at 436; *see, e.g., Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001); *Horrigan*, 848 F.2d 321, 21 BRBS 73(CRT).

In his order, the district director considered and rejected employer's contention that the fee must be reduced on the basis of claimant's limited success. Comp. Order at 1, 3. In determining that such a reduction was not warranted on the facts of this case, the district director found it significant that claimant successfully defended against employer's average weekly wage argument and, thus, succeeded in obtaining additional compensation for a period following employer's termination of disability benefits. *See*

³ Citing Section 28(b) of the Act, 33 U.S.C. §928(b), employer avers that claimant's attorney's fee must be based solely upon the difference between the amount of compensation awarded and the amount paid or tendered by employer. *See* Emp. Petition for Review and brief at 3-5; Reply Brief at 3. Contrary to employer's assertion, the district director correctly determined that Section 28(a), 33 U.S.C. §928(a), rather than Section 28(b), governs the fee in this case. Comp. Order at 1-2. *See Pool Co. v. Cooper*, 274 F.3d 543, 34 BRBS 109(CRT) (5th Cir. 2001) (Section 28(a) applies where an employer declines to pay any compensation within 30 days after receipt of notice of a claim from the district director notwithstanding the employer's voluntary payment of compensation prior to the filing of the claim).

id. at 2-3. Employer has not established that the district director abused his discretion in his consideration of the degree of claimant's success. *See Barbera*, 245 F.3d 282, 35 BRBS 27(CRT). As the fee awarded by the district director is reasonable in relation to the results obtained by claimant, we reject employer's contention of error and affirm the district director's fee award. *See Hensley*, 461 U.S. 424; *Barbera*, 245 F.3d 282, 35 BRBS 27(CRT).

Accordingly, the district director's Compensation Order Award of Attorney's Fees is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge