

BRB No. 01-0360

JOSEPH K. SAMUEL )  
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 Claimant-Petitioner )  
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 v. )  
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 LAKE UNION DRY DOCK ) DATE ISSUED: Dec. 19, 2001  
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 and )  
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 LIBERTY NORTHWEST )  
 )  
 Employer/Carrier- )  
 Respondents ) DECISION and ORDER

Appeal of the Compensation Order Approval of Attorney Fee and Compensation Order on Reconsideration of Karen P. Staats, District Director, United States Department of Labor.

William D. Hochberg and Nicole A. Hanousek, Edmonds, Washington, for claimant.

Marshall L. Ferguson (Metz & Associates, P.S.), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Compensation Order Approval of Attorney Fee and Compensation Order on Reconsideration (Case No. 14-124792) of District Director Karen P. Staats 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 Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On December 1, 1997, claimant filed a claim for benefits, alleging he sustained a binaural work-related hearing loss. The case was referred to the Office of Administrative Law Judges on April 4, 2000. The parties subsequently entered into a settlement agreement under Section 8(i) of the Act, 33 U.S.C. §908(i), which was approved by the administrative law judge. Claimant obtained

\$3,200 in compensation as a result of the settlement.

Claimant's counsel submitted a fee petition to the district director, requesting a fee of \$4,232.09 for 14.5 hours of attorney services at rates of \$200, \$140 and \$125 per hour, and 16.15 hours of legal assistant services at rates of \$100, \$90 and \$70 per hour, plus costs of \$317.59. Employer filed objections. Claimant's counsel requested a fee for an additional two hours of attorney services at an hourly rate of \$145, and .5 hour at an hourly rate of \$200 for defending the fee petition.

The district director awarded claimant's counsel an attorney's fee totaling \$2,651.50, plus costs of \$317.59. The district director reduced the hours for all attorney time by 50 percent, based on her finding that the case was neither novel nor complex, and that the claim was not handled in an efficient manner. The district director also found that claimant initially sought an award of \$5,822 for his binaural hearing loss, but accepted a settlement of \$3,200. Additionally, the district director reduced the hourly rate of the lead attorney from \$200 to \$175, because the case was not complex. She found, however, that the hourly rates charged by the other attorneys and legal assistants were reasonable. Finally, the district director reduced the request for defending the fee petition to one hour at \$175 per hour. On claimant's motion for reconsideration, the district director affirmed her findings.

On appeal, claimant contends that the district director erred in reducing the hourly rate of the lead attorney from \$200 to \$175, and in reducing the number of attorney hours by 50 percent without sufficient rationale. In its response brief, employer urges affirmance of the district director's findings. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, which provides for employer's liability for a reasonable attorney's fee, and the applicable regulation, 20 C.F.R. §702.132, which provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work performed and shall take into account the quality of the representation, the complexity of the issues, and the amount of benefits awarded. *See Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989); *see generally Hensley v. Eckerhart*, 461 U.S. 424 (1983).

We reject claimant's contention that the district director failed to consider the regulatory criteria in awarding the attorney's fee. Although the district director does not cite to 20 C.F.R. §702.132 or case law, her fee order clearly takes the relevant factors in consideration. *See Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10<sup>th</sup> Cir. 1997); *Finnegan v. Director, OWCP*, 69 F.3d 1039, 29 BRBS 121(CRT) (9<sup>th</sup> Cir. 1995). In this regard, the district director acted within her discretion by reducing the fee because the case was not complex and because claimant settled for an amount less than that which he originally sought. *See generally Bazor v. Boomtown Belle Casino*, 35 BRBS 121 (2001); *Berezin v. Cascade General, Inc.*, 34 BRBS 163 (2000). Similarly, the district director did not abuse her discretion in reducing the hourly rate of lead counsel from \$200 to \$175, based on the lack of complexity of the case. Contrary to claimant's contention, that the district director has awarded counsel the \$200 rate in other cases does not mandate that she do so here,

having rationally found the case to be of a routine nature.

We must remand the case, however, for further findings regarding the reduction in the number of hours requested for attorney services. The district director found that the claim was not handled efficiently. This finding is within her discretion as she is in the best position to make this determination, and we will not disturb it. The district director noted that the claim was first filed in December 1997 with only an uninterpreted audiogram attached. When claimant requested a formal hearing in February 1998, the district director informed claimant he needed to obtain a medical report interpreting the audiogram and to provide wage data and information concerning the type of equipment that exposed him to loud noise.

Claimant provided Social Security records in April 1998, but did not provide a medical report until October 1998. When the district director, in October 1998, identified the responsible employer from among the four against which claimant filed, that employer asked for a medical release which apparently was not provided by the time the case was referred to the Office of Administrative Law Judges. The district director fully considered claimant's contentions on reconsideration as to why the delays occurred or were not the fault of claimant, and claimant has not met his burden of establishing error in the district director's finding that the claim was handled inefficiently.<sup>1</sup>

Nonetheless, inefficiency in handling the claim does not necessarily require a finding that counsel's fee request should be reduced if the inefficiency did not result in "over billing." If the fee petition reflects necessary services that had to be performed, whenever they were performed, then counsel need not be penalized for his inefficiency. If, however, due to counsel's handling of the claim, services were performed that would not have been necessary had the claim been more expeditiously handled, then the district director may properly reduce those services she finds unnecessary. The district director's across-the-board 50 percent reduction does not provide a basis for us to review which services were necessary.

Therefore, we remand the case for the district director to reconsider the number of hours for which counsel is entitled to a fee.

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<sup>1</sup>Contrary to claimant's contention, the fact that the administrative law judge found counsel to have acted efficiently before him is not relevant to the district director findings. Fees for legal services must be approved at each level of the proceedings by the tribunal before which the work was performed. 33 U.S.C. §928(c); *see generally* *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Accordingly, the district director's Compensation Order Approval of Attorney Fee and Compensation Order on Reconsideration are vacated in part, and the case is remanded to the district director for further findings consistent with this decision.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge