

BRB No. 98-822

CHRIS H. FAIRLEY)	
)	
Claimant-Petitioner)	DATE ISSUED:
)	
v.)	
)	
INGALLS SHIPBUILDING, INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees and the Denial of Claimant's Motion for Reconsideration of Jeana F. Jackson, District Director, United States Department of Labor.

Scott O. Nelson (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Compensation Order Award of Attorney's Fees and the Denial of Claimant's Motion for Reconsideration (Case No. 6-157882) of District Director Jeana F. Jackson 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, *e.g.*, *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for benefits under the Act on February 7, 1994, based upon his alleged work-related hearing impairment. Employer later accepted liability for the claim and voluntarily paid benefits on September 19, 1994, prior to any formal adjudication of the claim. Thereafter, claimant's counsel submitted a petition for an attorney's fee for work performed before the district director, requesting a fee totaling \$1,631.25, representing 10.875 hours at \$150 per hour, plus expenses of \$64.50. In her Compensation Order Award of Attorney's Fee dated December 10, 1997, the district director awarded claimant's counsel a fee totaling \$625, for 6.25 hours at \$100 per hour, and \$55 in expenses, of which employer was ordered to pay \$267.50, with the remainder of the fee, \$412.50, payable by claimant as a lien upon the compensation award. The district director summarily denied claimant's motion for reconsideration. Relevant to the instant appeal, the district director denied any time for attorney services rendered after the date that employer paid benefits, September 19, 1994, based on her finding that no further benefits were derived from services performed subsequent to that date.

On appeal, claimant's counsel challenges the district director's denial of an attorney's fee for services rendered after September 19, 1994. Employer responds, urging affirmance of the fee award.

Claimant's counsel asserts that, contrary to the district director's determination, all entries on the fee petition after September 19, 1994, totaling 4.625 hours, reflect legal work that was required in order to ensure that this claim was properly wrapped up and, as such, these fees are compensable as reasonable and necessary "wind-up" services associated with the claim. Specifically, counsel argues that time spent after September 19, 1994, was necessary to secure medical benefits for claimant as employer did not authorize claimant medical benefits until November 28, 1994, and that claimant has still not received reimbursement for one medical provider.

Employer may be held liable for reasonable "wind-up" services after it has agreed to pay benefits. See *Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995). For the reasons stated in *Everett v. Ingalls Shipbuilding, Inc.*, BRBS , BRB No. 98-0492 (Dec. 16, 1998), we vacate the district director's denial of an attorney's fee for services performed after September 19, 1994. On remand, the district director must provide an adequate discussion of the time requested and services rendered by claimant's counsel after September 19, 1994, and assess the necessity and reasonableness of the work involved, in order to discern whether these entries represent "wind-up" services for which counsel may be entitled to a fee, payable by employer.

Accordingly, the district director's denial of all attorney's fees after September 19, 1994, is vacated, and the case is remanded to the district director for further consideration consistent with this opinion. In all other respects, the district director's fee award is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge