

WILLIAM JACOBS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
L.A. SHIPYARDS & DRY DOCK)	DATE ISSUED:_____
)	
and)	
)	
CHUBB/PACIFIC INDEMNITY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Order Approving Settlement and Awarding Attorney Fee, Order Denying Petition for Reconsideration, and Order Denying Supplemental Petition for Attorneys' Fees of Alexander Karst, Administrative Law Judge, United States Department of Labor.

Victoria Edises (Kazan, McClain, Edises, & Simon), Oakland, California, for claimant.

Roger A. Levy (Laughlin, Falbo, Levy, & Moresi), San Francisco, California, for employer/carrier.

Before: DOLDER and McGRANERY, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Order Approving Settlement and Awarding Attorney Fee, Order Denying Petition for Reconsideration, and Order Denying Supplemental Petition for Attorneys' Fees (90-LHC-1789) of Administrative Law Judge Alexander Karst 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 be set aside only if 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).

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (1988).

Claimant was employed by employer from 1942 until 1944, during which time he was exposed to asbestos. Thereafter, claimant worked in non-maritime employment and had no other exposure to asbestos. He retired from employment in 1978. Claimant's physician first noted pleural thickening in 1986, and on July 30, 1987, claimant filed a claim under the Act for asbestos-related pleural disease. Although the parties disputed various issues, they opted to settle the claim, pursuant to Section 8(i), 33 U.S.C. §908(i) (1988), for a total recovery to claimant of \$28,000 for past and future compensation and medical expenses.¹ On October 29, 1990, claimant's attorney submitted an application to the administrative law judge for a fee for work performed before the Office of Administrative Law Judges. Claimant's counsel requested a fee of \$8,253.50, plus \$2,130.58 in expenses.² Employer filed a timely objection to the petition. It agreed to counsel's figure for expenses; however, citing excessive time, excessive rates, routine issues, and duplicative services as reasons, employer concluded that 30 hours of attorney time, resulting in a \$4,300 attorney fee, is reasonable in this case.³

On November 21, 1990, the administrative law judge issued an Order approving the parties' settlement. In it, he also addressed counsel's request for a fee and expenses. He awarded the requested expenses but reduced the fee to correspond with employer's suggested fee of \$4,300. The administrative law judge, however, did not specify which services he rejected or times he reduced. He stated only:

[Employer's] objections to the attorney fee petition are persuasive and reasonable and are therefore sustained on the grounds in the said objections.

Order Approving Settlement at 1. Claimant petitioned for reconsideration, but the administrative law judge summarily denied the petition. Thereafter, claimant's counsel filed a Supplemental Petition for an attorney's fee, requesting an additional \$500 in services. On January 23, 1991, the administrative law judge denied the Supplemental Petition. Claimant appeals the administrative law judge's original reduction of the fee, denial of reconsideration, and denial of the supplemental request. Employer responds, urging affirmance of the fee award.

First, claimant contends the administrative law judge's fee reduction and subsequent refusal to reconsider his decision are arbitrary and not in accordance with the law. Claimant contends the

¹Employer paid claimant \$18,000 to settle his claim under the Act, and \$10,000 to settle his state workers' compensation claim. *See* Settlement Agreement.

²Counsel's requested fee was based on the following services: 17 hours of attorney work at a rate of \$150 per hour; 27.1 hours of attorney work at \$175 per hour; .6 hour of attorney work at \$125 per hour; 5.9 hours of attorney work at \$100 per hour; .6 hour of law clerk work at \$85 per hour; and, 4.95 hours of paralegal/legal assistant work at \$50 per hour. *See* Petition.

³Employer objected to all work that was not performed by an attorney and concluded that a reasonable fee would be based on 26 hours of attorney work at a rate of \$150 per hour, plus four hours of attorney work at a rate of \$100 per hour. *See* Objections at 7.

administrative law judge failed to provide a sufficient explanation for the reduction and erred in adopting employer's objections and recommendations. Further, claimant contends that the awarded fee is not reasonable or adequate in that the requested rates and times were not excessive given the complexity of the case and the quality of the representation, that there was no duplication of services, and that the itemized paralegal services were neither excessive nor clerical in nature. Citing *Swain v. Bath Iron Works Corp.*, 14 BRBS 657 (1982), employer responds, arguing that the administrative law judge acted within his discretion by adopting employer's conclusions and reducing the fee. Additionally, employer reasserts its objections below as justification for the administrative law judge's decision.

In *Swain*, 14 BRBS at 657, the administrative law judge adopted employer's objections to claimant's counsel's request for an attorney's fee. The Board vacated the fee award because part of the administrative law judge's award included time for services before the district director. The Board noted, however, that the administrative law judge adopted what appeared at first to be well-detailed reasons for reducing the fee. On closer evaluation, the Board determined that employer's objections constituted mere examples of points of disagreement and unclear conclusions regarding the hourly rate and the number of hours to award. While the Board did not prohibit the administrative law judge from adopting employer's objections on remand, it ordered him to provide sufficient explanation for the reduced fee award. *Id.* at 665-667. Employer herein contends its objections meet the criteria established in *Swain* and its reasons are sufficient to justify the fee reduction in this case; therefore, the Board need not vacate the administrative law judge's attorney's fee award.

A review of employer's objections, however, fails to establish a sufficient reason for the fee reduction. Not only do employer's objections fail to fully explain which of counsel's requests should be accepted or rejected, but they fail to account for all of the rejections necessary to reach its conclusion that it should be held liable for only 30 hours of attorney services. Consequently, they do not constitute sufficient explanation for a fee reduction. *Id.*

Additionally, based on employer's objections, counsel's requested time for paralegal services was denied in its entirety. Counsel sought 5.55 hours for paralegal, law clerk, and legal assistant services, which included time for telephone calls, memoranda and correspondence. Employer challenged this time, stating that it constituted clerical work. The Board has held previously that work performed by non-attorneys may be billable if the work is the type normally performed by attorneys. *Quintana v. Crescent Wharf & Warehouse Co.*, 18 BRBS 254 (1986); *Staffile v. International Terminal Operating Co., Inc.*, 12 BRBS 895 (1980). The administrative law judge did not make a factual determination on this matter as to whether the tasks here fit into that category.

In this case, as in *Swain*, 14 BRBS at 657, the administrative law judge's summary decision adopting employer's conclusions without independent discussion or comment cannot be affirmed; the administrative law judge's failure to provide a sufficient explanation to support the reduction of the attorney's fee renders his decision arbitrary. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984); *Muscella*, 12 BRBS at 272. We, therefore, vacate the award of an attorney's fee and remand the case to the administrative law judge for further consideration of the requested fee, including a determination of the appropriate hourly rates and hours requested, and a sufficient explanation of any reduction.

Claimant also contends the administrative law judge abused his discretion in denying the Supplemental Petition for an attorney's fee. Particularly, claimant contends he used an improper standard to evaluate the supplemental fee petition. The administrative law judge denied the request because counsel failed to "show how or why the services listed therein were necessary or reasonable. . . ." Order Denying Supplemental Petition. Section 702.132 of the regulations provides the requirements of a valid application for a fee for services rendered. 20 C.F.R. §702.132. Under that regulation, any fee awarded must be reasonably commensurate with the necessary work done. To enable an administrative law judge to determine whether the requested fee is reasonably commensurate with the necessary work done, counsel must provide certain information in the fee petition. Among the requirements are the need to describe the extent and character of the work, the professional status of the person performing the work, the hours devoted to the task and the applicable billing rate. Nowhere in the regulations or in Section 28 of the Act is counsel specifically required to state why the services were necessary or reasonable. If the application is generally well-detailed, the administrative law judge should be able to determine whether the services are reasonable and necessary. *Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988); 33 U.S.C. §928; 20 C.F.R. §702.132.

In the instant case, counsel's application clearly meets the standards set by the regulations. She identified the services rendered,⁴ the date the work was performed, the status of the person who performed said work, the hours required for its completion, and the applicable billing rate. The administrative law judge denied counsel's supplemental fee because counsel did not assert each item's necessity or reasonableness. As the fee petition conforms to the requirements of the regulation, it becomes incumbent upon the administrative law judge to give valid reasons why the services are not reasonable or necessary.⁵ Therefore, we vacate the administrative law judge's denial of the supplemental petition for a fee and remand the case for further consideration and for a sufficient explanation should the administrative law judge again decide to deny the supplemental fee.

Accordingly, the administrative law judge's award of an attorney's fee, Order Denying

⁴For example, counsel requested time for a telephone conversation with claimant, correspondence with the administrative law judge, and receipt and review of the administrative law judge's Order. See Supplemental Petition.

⁵We note that although counsel requested time for drafting and revising a response to employer's objections to the original fee petition, the record contains no such response.

Petition for Reconsideration, and Order Denying Supplemental Petition for Attorneys' Fees are vacated, and the case is remanded to the administrative law judge for further consideration consistent with this decision. The administrative law judge's approval of the parties' settlement is affirmed.

SO ORDERED.

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge