

BRB No. 99-0913

OPAL EVERETT)
(Widow of ROBERT L. EVERETT))
)
 Claimant-Respondent)
)
 v.)
)
 INGALLS SHIPBUILDING,) DATE ISSUED:
 INCORPORATED)
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Supplemental Compensation Order Awarding Attorney's Fees Upon Remand of Jeana F. Jackson, District Director, United States Department of Labor.

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

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Supplemental Compensation Order Awarding Attorney's Fees Upon Remand (Case No. 6-155974) 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).

This case is before the Board for the second time. To recapitulate the facts, decedent filed a claim for benefits under the Act on October 6, 1993, and employer accepted liability and voluntarily paid benefits on October 24, 1994, prior to any formal adjudication. Claimant's counsel thereafter filed an attorney's fee petition before the district director seeking a total fee \$1,471, representing 9.375 hours at an hourly rate of \$150, plus expenses

of \$64.75. In her Compensation Order Award of Attorney's Fee dated December 9, 1997, the district director awarded claimant's counsel a total fee of \$805, representing 7.5 hours at an hourly rate of \$100, plus \$55 in expenses. Specifically, the district director determined that employer cannot be held liable for services rendered after the date that employer paid benefits, October 24, 1994, based on her finding that no further benefits were derived from services performed subsequent to that date. Accordingly, the district director ordered employer to pay \$355 of the attorney's fee and assessed the remainder of the fee, \$450, against claimant as a lien upon his compensation award. Thereafter, claimant challenged the district director's denial of an attorney's fee for the 1.875 hours of services rendered after October 24, 1994.

Relying on *Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995), the Board, on appeal, vacated the district director's denial of an attorney's fee for services performed after October 24, 1994, as the district director rejected all of these services on the ground that no further benefits were derived from services rendered subsequent to that date without first considering the necessity and reasonableness of the time requested as it may relate to any services performed to "wind-up" this case. On remand, the Board instructed the district director that she must provide an adequate discussion of the time requested and services rendered by claimant's counsel after October 24, 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. *Everett v. Ingalls Shipbuilding, Inc.*, 32 BRBS 279 (1998). Employer subsequently filed a motion for reconsideration with the Board, contending that neither the Act nor the jurisprudence of the United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, provides for an employer assessed fee for "wrap-up" time in a situation where employer has already paid benefits. On reconsideration, the Board affirmed its prior Decision and Order in all respects, distinguishing the instant case from *Wilkerson v. Ingalls Shipbuilding, Inc.*, 125 F.3d 904, 31 BRBS 150 (CRT)(5th Cir. 1997). *Everett v. Ingalls Shipbuilding, Inc.*, 33 BRBS 38 (1999), *aff'g on recon. en banc*, 32 BRBS 279 (1998).

On remand, the district director found that one hour of services rendered by claimant's counsel after October 24, 1994, was reasonable and necessary. Thus, the district director awarded a total fee of \$905, representing 8.5 hours at an hourly rate of \$100, and ordered employer to pay \$455 of the attorney's fee, assessing the remainder of the fee, \$450, against claimant as a lien upon his compensation award. Employer appeals the district director's fee award, incorporating by reference the arguments it made before the Board in its prior Motion for Reconsideration.

We reject employer's contention that the district director should not have awarded any

fee after October 24, 1994. As the Board has previously held, it is not unreasonable for employer to be held liable for a fee for services such as counsel's explaining the implication of a decision or an employer's payment to the claimant, or for counsel to ascertain that the correct sum has been paid. *See Everett*, 33 BRBS at 40; *Nelson*, 29 BRBS at 95. In the instant case, the district director specifically considered the entries after October 24, 1994. After finding that one hour of the requested 1.875 hours was reasonable and necessary, the district director reduced counsel's fee request accordingly. As employer has failed to show an abuse of discretion in this regard, we affirm the district director's fee award. *See, e.g., Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Accordingly, the Supplemental Compensation Order Awarding Attorney's Fees Upon Remand of the district director is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge