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Claimant-Petitioner)	
)	
v.)	
)	
CONTAINER MAINTENANCE)	DATE ISSUED: 10/31/2007
CORPORATION)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Order Awarding Attorney Fee and Paralegal Fee and the Amended Order Awarding Attorney Fee and Paralegal Fee of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

G. Mason White and James D. Kreyenbuhl (Brennan, Harris & Rominger, LLP), Savannah, Georgia, for employer/carrier.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order Awarding Attorney Fee and Paralegal Fee and the Amended Order Awarding Attorney Fee and Paralegal Fee (2006-LHC-0832) of Administrative Law Judge Alan L. Bergstrom 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. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for permanent partial disability benefits, alleging that his hearing loss is causally related to his employment with employer. After the claim was transferred to the Office of Administrative Law Judges, employer agreed to pay the benefits sought by claimant; accordingly, the case was remanded to the district director.

Claimant's attorney subsequently filed a fee petition for work performed before the administrative law judge seeking a total fee of \$3,428.75, representing \$3,405 for 13.62 hours of attorney's services at the hourly rate of \$250, and \$23.75 representing one-quarter of a hour of paralegal services at the hourly rate of \$95. Employer filed objections to the fee petition. In replying to employer's objections, claimant's counsel amended his fee request to reflect at total fee of \$2,472.25. In his initial order, the administrative law judge reduced the amount of time itemized for various services performed by counsel, disallowed the one-quarter hour of paralegal time sought, and reduced counsel's hourly rate to \$225. Accordingly, claimant's counsel was awarded an attorney's fee of \$2,103.75. In his amended order, the administrative law judge found that claimant's reply to employer's objections had been filed on the day following the issuance of his order awarding counsel a fee, and that this reply indicated that a number of hours initially documented as having been performed by counsel were in fact performed by counsel's paralegal. Accordingly, the administrative law judge modified his attorney's fee award to reflect counsel's entitlement to fee in the amount of \$1,973.75, representing 8.35 hours of attorney services performed at the hourly rate of \$225, and one hour of paralegal services performed at the hourly rate of \$95.

On appeal, claimant challenges the amount of the attorney's fee awarded to counsel. Employer responds, urging affirmance.

Claimant initially challenges the hourly rate awarded by the administrative law judge. Claimant's counsel requested \$250 per hour for his services. The administrative law judge found that the case was not novel, and that the hourly rate requested was excessive given the typical billing rates in the Savannah, Georgia, area. Claimant's assertions on appeal that he is entitled to \$250 per hour for his services based on his experience as a longshore attorney, the nature of the case, and cost-of-living increases are insufficient to show that the administrative law judge abused his discretion in awarding a fee based on an hourly rate of \$225 per hour.¹ *See generally Barbera v. Director,*

¹ We reject claimant's argument that the administrative law judge should base his hourly rate determination upon fee orders entered by a court of appeals, the Board, and an administrative law judge in another case. Fees for legal services must be approved at each level of the proceedings by the tribunal before which the work is performed. 33 U.S.C. §928(c); *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156 (1994). Thus, the hourly rate awarded by another body in a different case is not determinative of the hourly rate counsel should receive in this case, as the administrative law judge herein is in the

OWCP, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001); *Anderson v. Associated Naval Architects*, 40 BRBS 57 (2006); 20 C.F.R. §702.132. Therefore, we affirm the hourly rate awarded by the administrative law judge. *O’Kelley v. Dep’t of the Army/NAF*, 34 BRBS 39 (2000); *McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff’d on recon. en banc*, 32 BRBS 251 (1998).

Claimant additionally argues that the administrative law judge erred in reducing his requested fee based upon a finding that his fee petition lacked specificity and set forth his services rendered in quarter-hour increments. We disagree. Section 702.132 of the Act’s implementing regulations, 20 C.F.R. §702.132, states that a fee petition “shall be supported by a complete statement of the extent and character of the necessary work done. . . .” In the instant case, the administrative law judge determined that the services listed by counsel on May 10, June 8, August 10, October 10, October 16, and October 23, 2006, lacked the specificity required to establish that the work was in furtherance of the case pending before the administrative law judge. The administrative law judge also reduced the time spent reviewing documents and engaging in telephone conversations from one-quarter to one-eighth of an hour.² Lastly, the administrative law judge reduced, from 4.25 hours to 3.4 hours, the time requested for the preparation and review of various documents, finding that counsel’s fee petition lacked the specificity required for him to determine if the time sought represented the actual amount of time expended or incremental billing. As claimant’s assertions on appeal are insufficient to meet his burden of proving that the administrative law judge abused his discretion with regard to these reductions, we affirm the administrative law judge’s decision to reduce the number of hours sought by counsel. *See generally Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988).

Claimant also argues that the administrative law judge erred in failing to award an attorney’s fee for the time spent responding to employer’s objections to his fee petition. Specifically, claimant seeks an additional fee for one-half hour of time which he alleges was spent in drafting the letter which defended his fee petition. While claimant correctly states that an attorney’s fee may be awarded for time spent defending a fee petition, *see Byrum v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 833 (1982); *Morris v. California Stevedore & Ballast Co.*, 10 BRBS 375 (1979), claimant did not file a request for this time with the administrative law judge. On November 3, 2006, claimant filed a fee petition with the administrative law judge requesting a fee for services performed

best position to ascertain the reasonableness of the fee request. *See Anderson v. Associated Naval Architects*, 40 BRBS 57 (2006); *see also Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004).

² Claimant, in support of his position on appeal, cites 20 C.F.R. §802.203 which applies to fees before the Board. The applicable regulation governing attorney fee petitions for services performed before the administrative law judge is found at 20 C.F.R. §702.132.

between February 21, and October 24, 2006. Following his receipt of employer's objections to his fee request, claimant, on November 21, 2006, filed a letter with the administrative law judge in which he replied to employer's contentions. Claimant did not, however, file an amended fee petition nor did he request, in this later communication with the administrative law judge, an attorney's fee for the time spent in drafting this subsequent letter. Accordingly, the administrative law judge committed no error in failing to award claimant an attorney's fee for work not claimed. Claimant's request that the Board add a half hours time to the fee is denied, since that service was performed before the Office of Administrative Law Judges, and the Board can award a fee only for work performed before it. *See Smith v. Alter Barge Line, Inc.*, 30 BRBS 87 (1996).

Claimant's counsel seeks an attorney's fee of \$500, representing 2 hours of services performed during the pendency of this appeal before the Board. As claimant was unsuccessful in prosecuting his appeal before the Board, his request for a fee payable by employer for services performed while this case was before the Board is denied. 33 U.S.C. §928, 20 C.F.R. §802.203.

Accordingly, the administrative law judge's Order Awarding Attorney Fee and Paralegal Fee and Amended Order Awarding Attorney Fee and Paralegal Fee are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge