BRB No. 07-0347

P.C.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LOGISTEC OF CONNECTICUT, INCORPORATED	)	DATE ISSUED: 09/27/2007
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney's Fees of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Gerald R. Rucci, New London, Connecticut, for claimant.

Peter D. Quay, Taftville, Connecticut, for employer/carrier.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney's Fees (2005-LHC-0169, 2005-LHC-0957) of Administrative Law Judge Daniel F. Sutton 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. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sustained a work-related back injury in 1999. He also suffered from work-related bilateral carpal tunnel syndrome in 2000. In a decision dated July 25, 2003, based on the parties' stipulations, Judge Sutton awarded claimant temporary partial disability benefits from August 24, 2000, through February 8, 2001, and 14.64 weeks of permanent partial disability benefits thereafter at a rate of $220.03 for a three percent loss of the use of each hand. The second time this case came before the Office of Administrative Law Judges (OALJ) claimant sought continuing disability benefits for bilateral rotator cuff tendonitis which developed as a result of his carpal tunnel syndrome. Judge Geraghty found that the shoulder injuries are work-related, and in a decision dated January 15, 2004, she awarded claimant temporary partial disability benefits for the shoulders to continue beyond February 8, 2001, for a period not to exceed five years from August 24, 2000, at a rate of $220.03 per week, 33 U.S.C. §908(e), (h), and medical benefits. The third, and most recent, time this case came before the OALJ, claimant sought to modify his disability benefits from temporary to permanent, seeking periods of permanent partial and permanent total disability benefits, and employer sought to terminate claimant's benefits after August 16, 2004, because claimant had returned to work with earnings in excess of his pre-injury average weekly wage. 33 U.S.C. §922. Employer also requested Section 8(f), 33 U.S.C. §908(f), relief from continuing liability for benefits. Additionally, claimant filed a separate claim requesting that employer pay for recommended medical testing related to claimant's work-related back injury.[1] In a decision dated April 6, 2006, Judge Sutton (the administrative law judge) concluded that claimant is entitled to the requested medical tests for his back condition, that claimant is entitled to ongoing permanent partial disability benefits of $220.03 per week for his shoulder injuries commencing August 7, 2003, 33 U.S.C. §908(c)(21), (h), except that during the period from August 16, 2004, through May 16, 2005, claimant is not entitled to any benefits as his earnings exceeded his average weekly wage and his employment was not sheltered. The administrative law judge found that employer is entitled to Section 8(f) relief. This decision was not appealed to the Board.

In May 2006, claimant's counsel filed a fee petition for work performed before the administrative law judge in the last proceeding; he separately itemized work performed for the back-related medical benefits case and the shoulder-related modification case. Counsel requested an attorney's fee in the amount of $8,100, representing 33.75 hours at an hourly rate of $240 for work performed on the medical benefits case. He also sought an attorney's fee in the amount of $18,600, representing 77.5 hours at an hourly rate of $240 for work performed on the modification case, and he requested expenses in the amount of $1,804.95. Employer filed objections to both fee petitions, arguing that

[1]Disability benefits for claimant's back injury were awarded under the state workers' compensation act.

claimant obtained only limited success and that the petitions are insufficiently detailed, and it specifically challenged some itemized entries. Claimant's counsel responded.

In a ten-page decision, the administrative law judge addressed each of employer's objections. He found that claimant substantially prevailed in this complex case. Specifically, he found that claimant was fully successful on the medical benefits claim and that, although claimant did not succeed in obtaining disability benefits for one of three periods of time, the disability claims involved a common core of facts. Therefore, he concluded there were no unsuccessful issues which warranted a reduction of the fee due to limited success. Additionally, the administrative law judge addressed the specific objections and reduced the fee request by 13.20 hours or $3,168. He awarded counsel a fee and expenses, payable by employer, in the amount of $25,226.95. Employer appeals the administrative law judge's fee award, and claimant responds urging affirmance.

Employer argues that the administrative law judge erred in awarding counsel a fee in this case. Specifically, employer argues that the fee petitions are not sufficiently detailed, the time spent in depositions related to the state claims is not compensable, and the fee is excessive in light of the amount of claimant's recovery in the medical benefits case and his limited success in the modification claim. The applicable regulation, 20 C.F.R. §702.132, 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 generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). If a claimant obtains only a limited degree of success, then the fact-finder should award a fee in an amount that is reasonable in relation to the results obtained. *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *George Hyman Construction Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161(CRT) (D.C. Cir. 1992); *General Dynamics Corp. v. Horrigan*, 848 F.2d 321, 21 BRBS 73(CRT) (1st Cir. 1988), *cert. denied*, 488 U.S. 992 (1988). The Supreme Court's decision in *Hensley* first provides that unsuccessful, unrelated claims are to be treated as if they had been raised in separate lawsuits, and therefore no fee may be awarded for services on these claims. Second, where claims involve a common core of facts, or are based on related legal theories, the fact-finder should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the case. *Hensley*, 461 U.S. at 434-435. Thus, if the plaintiff achieves only partial or limited success, the product of the hours expended on litigation as a whole times a reasonable hourly rate may result in an excessive award. Therefore, the fact-finder should award a fee only in an amount which is reasonable in relation to the results obtained. *Id.*, 461 U.S. at 436, 440. The *Hensley* test applies in cases arising under the Act. *See Brooks*, 963 F.2d 1532, 25 BRBS 161(CRT); *Horrigan*, 848 F.2d 321, 21 BRBS 73(CRT).

We reject employer's assertions that the administrative law judge erred in awarding this fee. We hold that the administrative law judge adequately addressed and rationally overruled employer's objections regarding the sufficiency of the fee petitions and the time related to the state claim. Specifically, the administrative law judge found that, despite its claim of vagueness, employer was able to object to 80 itemized entries, identifying only a few of them as "vague." While employer argues that this places the burden on it instead of on claimant's counsel to submit a sufficient fee petition, we agree with the administrative law judge that a general complaint of "vagueness" is contradicted by employer's ability to specifically challenge 80 itemized entries. As the administrative law judge reasoned that the fee petitions were sufficiently detailed to allow both he and employer to address each entry, we reject this objection. *Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988). Additionally, we reject employer's assertion that the administrative law judge improperly awarded a fee for time spent in depositions related to claimant's state workers' compensation claim. The administrative law judge found that three depositions were not shown to be unnecessary or unrelated to the longshore claim, and time spent on the fourth, the deposition of Dr. Browning, was reduced by 2.5 hours because much of the testimony was related to the state claims. As the administrative law judge rationally addressed these objections, making some reductions, we decline to further reduce the fee request. *See O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000); *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990); *Roach v. New York Protective Covering*, 16 BRBS 114 (1984).

Similarly, we decline to further reduce the fee for services performed in either the modification or the medical benefits claim, as the administrative law judge fully addressed employer's objections. Although, in the modification claim, claimant unsuccessfully sought total disability benefits for the period between August 16, 2004, and May 16, 2005, and he obtained fewer permanent partial disability benefits than he requested during the other periods of time, he defeated employer's request to terminate benefits and obtained continuing permanent, as opposed to temporary, disability benefits, thereby succeeding on the Section 22 claim. Moreover, the administrative law judge also rationally found that, despite claimant's partial success, the claim for different periods of disability benefits involved a common core of facts and the unsuccessful issue could not be separated from the issues on which he succeeded. *Hensley*, 461 U.S. 424. In the medical benefits claim, the administrative law judge resolved the causation issue in claimant's favor and found that the recommended diagnostic testing was necessary to evaluate claimant's condition. Decision and Order at 8-9. In his supplemental decision, the administrative law judge properly determined that claimant was fully successful on this claim. Contrary to employer's contention, the administrative law judge addressed all objections, and disallowed at least 4.2 hours of services requested in the medical benefits claim. Supp. Decision and Order at 10; *see also* Supp. Decision and Order at 7 (administrative law judge disallowed 3.25 hours of hearing preparation work for both claims). Thus, although the administrative law judge found claimant fully successful in

obtaining the requested diagnostic testing, he disallowed some of the requested time pursuant to employer's objections. As the administrative law judge addressed and fully explained his reasons for awarding the attorney's fee herein, and as employer has not shown that the administrative law judge abused his discretion, we affirm the fee award. *Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3d Cir. 2001).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge