

L.F.)
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 Claimant-Respondent)
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 v.)
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 JEFFBOAT, INCORPORATED) DATE ISSUED: 09/26/2007
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 and)
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 AMERICAN COMMERCIAL BARGE)
 LINE, LLC)
)
 Employer/Carrier-)
 Petitioners) DECISION and ORDER

Appeal of the Attorney Fee Order of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Melissa M. Olson (Embry & Neusner), Groton, Connecticut, for claimant.

Douglas P. Matthews (Frilot Partridge, L.C.), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Attorney Fee Order (2006-LHC-01156) of Administrative Law Judge Donald W. Mosser 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 suffered a hearing loss during the course of his employment with employer. Six days before the scheduled August 16, 2006, formal hearing, the parties agreed to the amount of compensation due claimant. They subsequently agreed to the remaining contested issues. On August 22, 2006, the administrative law judge issued an Order remanding the case to the district director for action regarding the issues on which the parties agreed.¹

Subsequently, as directed by the administrative law judge's Order, claimant's attorney filed a fee petition for work performed at that level, seeking a total of \$1,689.66, representing six hours of attorney services at the rate of \$261 per hour, one and one-half hours of paralegal services at the hourly rate of \$73, and costs of \$14.16. Employer objected to the attorney's hourly rate. The administrative law judge addressed employer's objection but found the requested rate and overall fee request to be reasonable in view of the quality of the representation and the successful result of the claim.

Employer appeals, arguing that the administrative law judge erred in determining the hourly rate to be paid claimant's attorney. Claimant responds, urging affirmance of the awarded hourly rate of \$261. Employer has filed a reply brief.

Employer challenges the hourly rate awarded by the administrative law judge for attorney time. Employer contends the administrative law judge erred in awarding counsel an hourly rate based on her customary billing charge in Connecticut where her practice is located. Rather, employer argues that the administrative law judge was required to base claimant's hourly rate on a lower prevailing hourly rate in Indiana where the claim arose. Moreover, employer contends that the hearing loss case was not complex, asserting that the claim was essentially uncontested as employer was not represented by an attorney until counsel's fee petition was filed.

We reject employer's contention of error. The regulation governing fee awards, 20 C.F.R. §702.132, states, *inter alia*, that "[a]ny fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded...." Pursuant to this regulation, the attorney must state her "normal billing rate." 20 C.F.R. §702.132(a). In this case, the administrative law judge appropriately addressed the regulatory factors in accordance with 20 C.F.R. §702.132 and employer's specific objections in finding that the requested fee, including the hourly rate of \$261, was

¹ The file before the Board does not contain any documents concerning the parties' agreement.

reasonable in view of the successful claim.² Attorney Fee Order at 2; *Moyer v. Director, OWCP*, 124 F.3d 1378, 34 BRBS 134(CRT) (10th Cir. 1997). That employer was not represented by legal counsel does not negate the necessity of claimant's counsel's services or demonstrate that the claimed hourly rate is excessive. Moreover, employer did not meet its burden showing that \$150 is the "prevailing" hourly rate for the jurisdiction where the case arose, as employer cited only an eight-year old decision stating that an hourly rate of \$150 was reasonable at that time. Therefore, as the administrative law judge adequately addressed the relevant factors and employer has not shown that the administrative law judge abused his discretion in awarding the attorney fee requested, including an hourly rate of \$261, we affirm the fee award of \$1,689.66. *See generally Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001).

Accordingly, we affirm the administrative law judge's Attorney Fee Order.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

² Although the record before us does not reflect the amount claimant obtained, counsel states in her response brief that she "was successful in securing benefits for indemnity as well as past and future medical care and treatment in the amount of \$29,734.59." Cl's Resp. Br. at 4. Employer has not disputed this sum.