



BRB No. 15-0132

SCOTT BARLOW)	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED: <u>Sept. 21, 2015</u>
)	
LOGISTEC USA, INCORPORATED)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Compensation Order Awarding of Attorney Fees of David Groeneveld, District Director, United States Department of Labor.

Robert B. Keville (Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C.), New London, Connecticut, for claimant.

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

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Compensation Order Awarding of Attorney Fees (OWCP No. 01-160127) of District Director David Groeneveld 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 it is shown by the challenging party to be arbitrary,

capricious, based on an abuse of discretion, or not in accordance with law. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant sustained a work-related injury to his left shoulder on April 26, 2004. He was diagnosed with a left shoulder strain and placed on modified duty. Initially, claimant missed only one day of work; however, he underwent left shoulder surgery on September 28, 2004, and was out of work for the surgery and a recovery period. Claimant returned to work in January 2005. Employer accepted the claim as compensable and paid claimant disability and medical benefits.¹ Subsequently, claimant left employer's employ and moved to Florida. Claimant did not seek medical care from August 2006 until December 2013, when he requested approval for shoulder treatment from employer. Employer denied the request, stating that many years had passed without any medical activity on claimant's claim and it did not know whether there had been any intervening injury or traumatic event. Employer requested that its claims examiner be permitted to interview claimant. Claimant's counsel denied the request.

Claimant requested an informal conference on his entitlement to medical treatment, which was held on February 27, 2014. At the conference, the parties agreed that employer would schedule a deposition of claimant. In his memorandum dated March 7, 2014, the district director stated there was insufficient information from which he could make a meaningful recommendation. Accordingly, he postponed issuing a recommendation until claimant's deposition could be taken. On April 28, 2014, the parties submitted claimant's deposition and requested that the district director issue a recommendation. On May 12, 2014, the district director recommended that employer accept liability for medical treatment of claimant's left shoulder. Employer accepted this recommendation.

Claimant's counsel subsequently submitted a petition for an attorney's fee for work performed before the district director. Specifically, counsel sought \$2,859.57, representing 7.6 hours of attorney time at an hourly rate of \$300, 6.6 hours of paralegal services at an hourly rate of \$75, 0.2 hours of secretarial services at an hourly rate of \$25, and \$79.57 in transcript costs. Employer objected to the fee petition, contending the services were excessive, unnecessary, or generated solely because claimant's counsel refused to allow its claims examiner to interview claimant.

In his Compensation Order dated December 16, 2014, the district director stated that he "reviewed the fee application taking into consideration the complexity of the case, the issues involved and the results obtained, the actual necessary work performed and other factors including the expertise of the attorney." Order at 1. In consideration of employer's objections, the district director reduced the fee by 1.4 hours of paralegal time

¹ Employer paid claimant temporary total disability benefits under the Act and benefits for a 14 percent impairment to his left shoulder pursuant to the Connecticut Workers' Compensation Act.

and 0.8 hours of attorney time, “for services related to preparation of file memorandum status, file review status, preparation for hearing, preparation of e-mail, telephone conference with PDQ, [and] review of email, as they appear excessive.” *Id.* The district director also stated he considered employer’s other objections but “they appear to be without merit.” *Id.* Thus, he awarded a total fee of \$2,499.57, payable by employer to claimant’s counsel. Employer appeals the fee award, and claimant responds, urging affirmance.

On appeal, employer asserts the district director erred in failing to address its contention that claimant’s attorney is not entitled to the fee requested because he unnecessarily prolonged the informal proceedings by not permitting employer’s claims examiner to interview claimant. Claimant’s counsel responds that he was protecting his client’s interests by not permitting employer’s representative to have an off-the-record conversation with claimant. Counsel asserts that an “on-the-record, under oath” deposition, at which he also could question claimant, was required to insure that claimant’s rights were protected.

We reject employer’s contention of error. The district director was fully aware of employer’s attempt to obtain an off-the-record statement from claimant and claimant’s counsel’s insistence that a deposition was necessary to protect claimant’s interest. The district director was not required to find, based on employer’s objections to the fee petition, that counsel’s litigation strategy unnecessarily prolonged the informal proceedings. Moreover, employer’s counsel agreed at the informal conference to proceed with a deposition of claimant and cannot allege that counsel’s services in this respect should be disallowed. Although the district director did not recite all of employer’s objections, he stated he considered them, as well as the regulatory criteria, *see* 20 C.F.R. §702.132(a), in reducing the requested fee in some respects. Order at 1. Employer has not established that the district director abused his discretion or erred as a matter of law in not further reducing the requested fee. Therefore, we affirm the district director’s fee award. *See Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *Pozos v. St. Mary’s Hospital & Medical Center*, 31 BRBS 173 (1997).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge