BRB No. 97-1779

LARRY A. BLACKMON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
DELTA CATERING	)	
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney's Fees of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Gino J. Rendeiro (Weeks, Kavanagh & Rendiero), New Orleans, Louisiana, for claimant.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney's Fees (95-LHC-2602) of Administrative Law Judge Lee J. Romero, Jr., 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).

Claimant was employed as a truck driver whose duties included delivering goods from employer's warehouse to various locations and unloading the goods from his truck to the containers on the dock. Claimant injured his right arm on August 16, 1994, when, as he was opening the freezer door of a container, it brook loose and pulled claimant "off center into the

box." He has not returned to longshore work since the accident and sought temporary total disability benefits under the Act.

In his Decision and Order, the administrative law judge found that claimant is a covered employee, *see* 33 U.S.C. §902(3), and that Delta Catering is the responsible employer. In addition, the administrative law judge found that claimant was temporarily totally disabled from August 19, 1994 through February, 22, 1995, temporarily partially disabled from February 23, 1995 through June 1995, when claimant was self-employed, and temporarily totally disabled from June 29, 1995 and continuing, as claimant's treating physician recommended that claimant quit working at his restaurant. In addition, the administrative law judge found that employer is not liable for claimant's treatment with Dr. Manale, as claimant did not request authorization for this treatment from employer. The administrative law judge also ordered employer to pay a penalty pursuant to Section 14(e), 33 U.S.C. §914(e), as it did not file a timely notice of controversion, and interest on past due compensation.

Subsequently, claimant's counsel filed a fee petition, in the amount of $35,101.78, representing 161.15 hours of legal services at the hourly rate of $200, and costs in the amount of $2,806.44. The administrative law judge reduced the rate requested to $125 per hour, after stating he considered the quality of the services performed, the results achieved, counsel's professional reputation and experience, and the customary rates charged and awarded in the geographic area of this case. In addition, the administrative law judge disallowed or reduced a number of the itemized entries, and found 94.85 hours of legal services reasonable and necessary in this case. Thus, the administrative law judge awarded claimant's counsel a fee in the amount of $13,221.53, representing 94.85 hours of legal services at the hourly rate of $125, and costs in the amount of $1,365.28.[1]

[1]Claimant's counsel also submitted an Amended Application for Attorney's Fees on July 31, 1997, requesting an additional 6 hours, including 5.5 hours to research and draft a memorandum in response to employer's opposition. In addition, claimant's counsel requested an additional $7,310.79 in costs. The administrative law judge reviewed the amended fee requested and, after reducing the hours requested, granted a fee for the services provided, but rejected claimant's request for additional costs.

On appeal, claimant contends that the administrative law judge erred in reducing the hourly rate requested from $200 to $125, and in reducing a number of the hours requested. In addition, claimant contends that the administrative law judge erred in reducing a number of the costs requested.[2] Employer has not responded to this appeal.

Initially, we agree with claimant's assertion that the administrative law judge erred in reducing the hourly rate from $200 to $125, as the administrative law judge did not discuss the prevailing customary hourly rate in the geographic region in which this case arose or counsel's normal billing rate. In his response to employer's objections, claimant's counsel cited cases from the general region awarding fees at an hourly rate higher than that awarded by the administrative law judge. Counsel as well referenced a survey of the economics of small law firms by Altman, Weil, Pensa (1992), which indicated that experienced attorneys practicing in the southern region of the United States earned $200 per hour in 1992. The administrative law judge did not address this submission. Moreover, in the case relied upon by the administrative law judge to support his reduction of the hourly rate to $125, *Edwards v. Todd Shipyards Corp.*, 25 BRBS 49 (1991), the Board affirmed the administrative law judge's reduction of the requested hourly rate from $150 to $125, as the administrative law judge found that this was the usual billing rate in the San Francisco region in 1987. This case cannot support the administrative law judge's reduction of the hourly rate to $125 in this case for work performed in the New Orleans area in 1995-1997. Therefore, as the administrative law judge did not discuss the customary billing rates in effect in the region at the time the services were performed or counsel's normal billing rate, we vacate the

[2] Claimant also contends that the administrative law judge erred in failing to order employer to pay as costs the medical bills which had been paid by claimant's counsel. The administrative law judge found in his Decision and Order that these medical expenses were not authorized and thus found that employer was not liable for reimbursement. As this decision was not appealed to the Board within 30 days, it became final and claimant's contentions regarding the lack of authorization will not be addressed in this appeal of the Supplemental Decision and Order Awarding Attorney's Fees. 20 C.F.R. §§702.350, 802.205.

administrative law judge's reduction of the hourly rate to $125, and remand the case to the administrative law judge to reconsider the hourly rate consistent with the regulatory criteria. 20 C.F.R. §702.132(a); *see generally Quintana v. Crescent Wharf & Warehouse Co.*, 18 BRBS 254 (1986).

Claimant also contends that the administrative law judge erred in disallowing a number of requested hours and costs, as counsel did not explain how the services were necessary to the prosecution of the claim. The administrative law judge found that claimant's counsel failed to show how these services were rendered in furtherance of the immediate claim. An attorney is entitled to compensation for all necessary work performed. The proper test for determining if the attorney's work is necessary is whether, at the time the attorney performs the work in question, he or she could reasonably regard the work as necessary to establish entitlement. *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Although claimant's counsel explains in his brief to the Board the purported relevance of the services provided, this explanation was not provided to the administrative law judge and the Board may not consider it in the first instance. *See generally* 33 U.S.C. §921(b)(3); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78 (CRT)(5th Cir. 1991), *rev'g in part* 19 BRBS 15 (1986). As the administrative law judge reviewed the items requested and found that they lack specificity as to how they were necessary to establish entitlement, we affirm the administrative law judge's reduction of the fee in this manner as a proper exercise of his discretion.

We also reject claimant's contention that the administrative law judge erred in finding that various entries in counsel's fee petition were excessive. Contrary to claimant's contention, the administrative law judge has the discretion to determine whether services rendered were reasonable as well as necessary. *See generally Cabral*, 13 BRBS at 100. The administrative law judge in the instant case considered claimant's fee petition, employer's objections, reduced a number of the entries as they were excessive given the circumstances and facts of this case, and found the remaining services rendered by claimant's counsel to be reasonable and necessary. We decline to disturb this rational determination. *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Accordingly, the administrative law judge's reduction of the hourly rate to $125 is vacated, and the case is remanded for further consideration of this issue consistent with this decision. In all other respects, the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge