

BRB No. 98-1615

WILLIAM SNOW )  
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 Claimant-Petitioner )  
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 v. )  
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 CONTINENTAL STEVEDORING ) DATE ISSUED: 9/15/99  
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 and )  
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 SIGNAL MUTUAL INDEMNITY )  
 ASSOCIATION, LTD. )  
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 Employer/Carrier- )  
 Respondents ) ) DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Brian R. Hersh, Miami, Florida, for claimant.

Lawrance B. Craig, III (Valle & Craig, P.A.), Miami, Florida, for employer/ carrier.

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

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (94-LHC-1967) of Administrative Law Judge Paul H. Teitler 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 injured during the course of his employment for employer on July 8, 1991, when the tractor-trailer he was driving overturned. Claimant alleged injuries to his neck, back, left knee and a resulting psychological impairment. Employer voluntarily paid benefits under the Act for temporary total disability, 33 U.S.C. §908(b), from July 9, 1991, to January 12, 1994, at which time the parties disputed the nature and extent of claimant's work-related disabilities. Claimant was represented by several attorneys during the course of the proceedings. On March 24, 1998, claimant, acting without counsel, and employer entered into a settlement of the claim, and on March 27, claimant and employer applied for approval of the settlement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i). On April 9, 1998, the administrative law judge approved the settlement agreement which provided, *inter alia*, that employer pay no more than \$21,000 in fees and costs to claimant's former attorneys, and the administrative law judge reserved the right to determine the amount awarded to each of claimant's former attorneys. Brian Hersh submitted a fee petition requesting \$30,786.06, which he subsequently amended to request the entire \$21,000 provided for in the settlement, and he represented that another of claimant's former attorneys, Steve Cahan, agreed to accept \$737 for his fee and costs. Glenn Miller submitted a fee petition requesting an attorney's fee of \$12,435, representing 82.9 hours at a rate of \$150 per hour and costs of \$659.39. Claimant's remaining three former attorneys, Howard L. Silverstein, Don Gillis, and Melvin Alldredge, waived any entitlement to a fee.

In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge awarded the fee and costs requested by Mr. Cahen of \$737, but he found that the fee requests of Mr. Hersh and Mr. Miller were unreasonably high. He reduced Mr. Miller's fee to \$5,909.39, representing 35 hours of compensable services at an hourly rate of \$150 and \$659.39 in costs. Mr. Hersh was awarded the remaining \$14,353.51.

On appeal, Mr. Hersh contends that the administrative law judge's fee determination is arbitrary and he seeks the \$5,909.39 fee awarded by the administrative law judge to Mr. Miller. Employer responds, urging that the total fee awarded to claimant's former attorneys not exceed \$21,000.

Mr. Hersh contends that the fee award of \$14,353.51 he received from the administrative law judge is arbitrary because, while a specific amount was awarded to Mr. Miller based on an approved hourly rate and attorney time expended, he was summarily awarded the remaining money provided for by the settlement agreement. When an administrative law judge reduces the amount of the attorney's fee from the amount requested, the administrative law judge is required to provide a sufficient explanation of the reasons for the reduction. *Welch v. Pennzoil Co.*, 23 BRBS 395,

402 (1990). Moreover, 20 C.F.R. §702.132 provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved and the amount of benefits awarded. See generally *Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134 (CRT)(10th Cir. 1997); see also *Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989).

In the instant case, the administrative law judge found excessive the fee requests of both Mr. Miller and Mr. Hersh. He reasoned that neither attorney provided legal service to the satisfaction of their former client, resolved the case, participated in the ultimate settlement, nor appeared before the administrative law judge at the time of the settlement. Moreover, the administrative law judge noted that he mediated the settlement of the claim. Thus, the administrative law judge found that the respective fees requested by Mr. Miller and Mr. Hersh are not reasonably commensurate with the result obtained.

The administrative law judge then reduced Mr. Miller's fee request from \$12,435 in fees and \$659.39 in costs to \$5,909.39. The administrative law judge specifically found reasonable Mr. Miller's hourly rate of \$150, but he reduced the number of hours from 82.9 to 35. With regard to Mr. Hersh, the administrative law judge found his requested hourly rate of \$300 excessive. Nonetheless, in awarding Mr. Hersh the greater fee he found Mr. Hersh's services instrumental in facilitating claimant's recovery, that he provided claimant with quality representation, and that Mr. Hersh represented claimant nearer in time to the date of the actual settlement. Finally, the administrative law judge credited Mr. Hersh's experience and the complexity of the case in awarding him a fee of \$14,353.61.

We affirm the fee awarded by the administrative law judge to Mr. Hersh as it has not been shown to be unreasonable.<sup>1</sup> The administrative law judge provided an adequate rationale for his reduction of the fee requested by Mr. Hersh, as well as for the fee awarded to Mr. Miller. His analysis reveals that the factors contained in the regulatory criteria at Section 702.132 were considered as they pertain to the unique facts of this case, in which a finite amount is available for attorney's fees. See *Moyer*, 124 F.3d at 1378, 31 BRBS at 134 (CRT); see also *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94, 97 (1988).

Lastly, Mr. Hersh has requested an attorney's fee of \$6,300 for work

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<sup>1</sup>We reject Mr. Hersh's contention that Mr. Miller's fee should be reversed because he did not submit a sworn fee petition. Neither the Act, 33 U.S.C. §928, nor the applicable regulation at 20 C.F.R. §702.132 imposes this requirement.

performed before the Board. Mr. Hersh, however, is not entitled to a fee for work performed before the Board as he was not successful on appeal. See *Bonds v. Smith & Kelly Co.*, 21 BRBS 240, 243 (1988).

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge