

GEORGE C. BACON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SOUTHEAST STEVEDORE,	)	
INCORPORATED	)	
	)	DATE ISSUED:
and	)	
	)	
FIREMAN'S FUND INSURANCE	)	
COMPANY	)	
	)	
Employer/Carrier-	)	
Respondent	)	DECISION and ORDER

Appeal of the Compensation Order-Award of Attorney's Fees of N. Sandra Kitchin, District Director, United States Department of Labor.

Ralph R. Lorberbaum (Zipperer & Lorberbaum. P.C.), Savannah, Georgia, for the claimant.

Charles W. Barrow (Barrow, Sims, Morrow & Lee, P.C.), Savannah, Georgia, for the employer/carrier.

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

PER CURIAM:

Claimant appeals the Compensation Order-Award of Attorney's Fees (6-101344) of District Director N. Sandra Kitchin 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 injured his left arm, left knee, back, and neck while driving a tractor trailer for employer on January 31, 1987. Although claimant was able to return to work on April 6, 1987, he continued to experience pain in his back and neck which caused him to miss work on an intermittent basis. Claimant sought temporary total disability compensation for the periods he was restricted from working by his treating physician as well as permanent partial disability compensation under the Act. The administrative law judge awarded claimant temporary total disability benefits from February 1, 1987 through April 5, 1987, July 7, 1987 through August 28, 1987, September 17, 1987 through November 10, 1987, and June 10, 1988 through July 15, 1988. 33 U.S.C. §908(b). The administrative law judge also awarded claimant temporary partial disability benefits from April 8, 1987 through July 10, 1987 and from November 10, 1987 through June 9, 1988 and continuing, 33 U.S.C. §908(e), as well as interest and medical benefits, 33 U.S.C. §907.

Thereafter, claimant's counsel filed a fee petition with the administrative law judge, requesting \$5,333, representing 40.7 hours of services at \$125 per hour plus \$246 in expenses. In a Supplemental Decision and Order-Award of Attorney Fee, after considering claimant's attorney's fee petition and employer's objections thereto, the administrative law judge found that the \$125 hourly rate requested was reasonable but disallowed 6.1 hours of the requested hours as excessive. Accordingly, he awarded claimant's counsel a fee of \$4,580, representing 34.6 hours at \$125 per hour plus the requested expenses.

Claimant also sought an attorney's fee for work performed at the district director level, requesting \$4,131.25, representing 33.05 hours at an hourly rate of \$125, plus \$246 in expenses. In a Compensation Order-Award of Attorney's Fees dated January 11, 1990, the district director, upon consideration of employer's objections, reduced the \$125 hourly rate requested to \$100, and disallowed 1.40 of the 33.05 hours claimed as excessive. The district director also disallowed \$126 of the expenses requested, finding that they were either a part of routine office overhead or involved work performed in connection with the formal hearing. The district director accordingly awarded claimant's counsel a total of \$3,285, representing 31.65 hours at \$100 per hour plus \$120 in expenses to be paid by employer. Claimant appeals the district director's fee award, arguing that inasmuch as the administrative law judge found that the \$125 hourly rate requested was reasonable in light of the regulatory criteria and the risk of delay in receiving payment, the district director abused her discretion in failing to base her fee award on that same hourly rate. Employer responds, urging affirmance.

We reject claimant's contention that the district director erred in failing to base her fee award on the \$125 hourly rate awarded by the administrative law judge. The determination of the amount of a fee is within the discretion of the body awarding the fee. 20 C.F.R. §702.132. Moreover, the district director may award a lesser fee than that requested if an adequate explanation of the reduction is provided. *See Devine v. Atlantic Container*, 23 BRBS 280, 288 (1990)(Lawrence, J., concurring and dissenting on other grounds). In making the fee award, the district director indicated that she was reducing the \$125 hourly rate requested to \$100 based on consideration of the level of complexity and results obtained for claimant in work performed before her office, as well as prevailing community rates. Inasmuch as the district director adequately explained her reduction of

counsel's hourly rate, and claimant does not otherwise contest the fee award as unreasonable, the fee award made by the district director is affirmed. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *see generally Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge