

JOSEPH RICCARDI )  
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 Claimant-Petitioner )  
 )  
 v. )  
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 PENNSYLVANIA SHIPBUILDING )  
 COMPANY ) DATE ISSUED:  
 )  
 Self-Insured )  
 Employer-Respondent ) DECISION and ORDER

Appeal of the Second Supplemental Decision and Order Granting Attorney Fees of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Arthur G. Girton, Chester, Pennsylvania, for claimant.

Andrew B. Klaber (Weber, Goldstein, Greenberg & Gallagher), Philadelphia, Pennsylvania, for employer.

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

PER CURIAM:

Employer appeals the Second Supplemental Decision and Order Granting Attorney Fees (90-LHC-3167) of Administrative Law Judge Robert D. Kaplan 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 and Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$14,750 for work performed before the administrative law judge in connection with claimant's claim for a lower back injury.<sup>1</sup> The fee petition presented the services performed in seven parts, itemized as Numbers 1-7. The second part,

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<sup>1</sup>The claim was referred for a formal hearing on July 1, 1991. At the formal hearing on March 24, 1992, the private parties stipulated to claimant's entitlement to temporary total and permanent partial disability compensation, as well as to employer's liability for medical benefits. Employer's claim for Section 8(f) relief was adjudicated by the administrative law judge, resulting in an award of such relief to employer.

Number 2, is for 65 hours for "gathering of additional extensive medical reports and information to clarify nature of injuries and causation; extensive medical research to do same; extensive interviews and telephone up-dates with claimant--Sept., 1989 to October, 1992." Claimant subsequently submitted a letter dated December 14, 1992, to the administrative law judge stating that while he does not keep strict time records, of the 65 hours, "at least" 8 to 10 hours were for an in-depth medical review of the extent of claimant's disability and "at least a dozen hours and probably closer to 20 hours" were for frequent communication with claimant, claimant's wife and several doctors. Employer did not submit any objections to this fee petition.

In a Supplemental Decision and Order Granting Attorney Fees, the administrative law judge noted that employer did not submit any objections, and granted claimant's counsel the requested fee. Employer subsequently requested reconsideration of the Supplemental Decision and Order Granting Attorney Fees, objecting to the fee application and stating that counsel's fee petition is inadequate under 20 C.F.R. §702.132, as the dates were not provided and the nature of the services was only generally described. Employer also contended that the nine hours requested in item Number 7 for post-hearing telephone discussions, review of opposing briefs, and conversations with claimant should be disallowed since post-hearing services are not compensable. The administrative law judge granted employer's request for reconsideration, stating that counsel should file a response to employer's contentions.

On March 18, 1993, counsel submitted a breakdown of the 65 hours comprising item Number 2, specifically listing dates and hours performed for correspondence totalling nine hours, and stating that telephone conversations from September 1989 to date totalled 18.5 hours, review of medical records totalled 20 hours, and preparation for claimant's deposition with opposing counsel totalled 10 hours.<sup>2</sup> Counsel also requested \$1,401 in costs. Employer submitted objections to this submission, contending the first four entries for 2.75 hours were not for services performed before the administrative law judge and should be disallowed, and the entries for 18.5 hours of telephone conversations and 10 hours preparing claimant for his deposition were inadequately documented and are general and vague.

In the Second Supplemental Decision and Order Granting Attorney Fees, the administrative law judge considered only the newly itemized 57.5 hours. He disallowed 2.75 hours for work performed before the case was referred for a formal hearing, 14.5 hours for telephone calls, 16 hours for review of medical records, and 8 hours for preparing claimant for his deposition. In disallowing these hours, the administrative law judge noted that the fee request generally was inadequately documented under the regulation at 20 C.F.R. §702.132.<sup>3</sup> The administrative law judge found that

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<sup>2</sup>These hours total 57.5 hours.

<sup>3</sup>This regulation provides that the fee application:

shall be supported by a complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing such work, the normal billing rate for each such person, and the hours devoted by each such person to each category of work.

counsel implicitly requested an hourly rate of \$125, and that this is an appropriate rate. The administrative law judge therefore awarded claimant's counsel an attorney's fee of \$2,031.25, apparently for 16.25 hours of services at \$125 an hour, plus \$1,401 in costs.

On appeal, claimant contends the administrative law judge's fee award is too low, and specifically that he erred in failing to award an attorney's fee for Numbers 3 through 6 of the original fee petition, totalling 31 hours.<sup>4</sup> Employer responds, urging affirmance.

We agree with counsel that the administrative law judge erred in not addressing counsel's entitlement to a fee for the services listed in Numbers 3 through 6. Employer generally objected to the vague nature of the fee petition, and specifically to the services listed in Number 2. In his fee award, the administrative law judge addressed only claimant's amended submission regarding Number 2 and employer's objections thereto. We therefore must remand the case to the administrative law judge for consideration of counsel's entitlement to a fee for these other services in light of the regulatory criteria at 20 C.F.R. §702.132 and employer's objection to the vague nature of the fee petition. *See generally Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 382 (1990); *Thompson v. McDonnell Douglas Corp.*, 17 BRBS 6 (1985); *Bell v. Volpe/Head Construction Co.*, 11 BRBS 377 (1980). We note, contrary to employer's suggestion below, that counsel's fee award should not be limited because the only issue ultimately presented for formal adjudication was its entitlement to Section 8(f) relief. Employer did not stipulate to claimant's entitlement to disability and medical benefits until the formal hearing, *see Boland Marine & Manufacturing Co. v. Rihner*, 41 F.3d 997, 29 BRBS 43 (CRT) (5th Cir. 1995), *aff'd* 24 BRBS 84 (1999), and the test for the compensability of services rendered is whether, at the time the service was performed, counsel could reasonably regard the work as necessary to establish entitlement. *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Accordingly, the administrative law judge's Second Supplemental Decision and Order Granting Attorney Fees is vacated, and the case is remanded for further consideration consistent with this decision.

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20 C.F.R. §702.132(a).

<sup>4</sup>The fee petition lists these items as follows:

3. Preparation, travel, conference time for hearing on March 24, 1992	7 hours
4. Preparation of paperwork and preparation of materials for hearing	10 hours
5. Preparation and deposition of Dr. Boor	7 hours
6. Preparation and deposition of Dr. Zweben	7 hours

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge