

BRB Nos. 96-0102
and 96-0102A

ALEXANDER HARRELL)	
)	
Claimant-Respondent)	
Cross-Petitioner)	DATE ISSUED:
)	
v.)	
)	
COOPER/T. SMITH STEVEDORING,)	
INCORPORATED)	
)	
Self-Insured Employer-)	
Petitioner)	
Cross-Respondent)	DECISION and ORDER

Appeals of the Supplemental Decision and Order - Awarding Attorney Fees of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Rutter & Montagna L.L.P.), Norfolk, Virginia, for claimant.

Gerard E.W. Voyer and Bradford C. Jacob (Taylor & Walker, P.C.), Norfolk, Virginia, for self-insured employer.

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

PER CURIAM:

Employer appeals and claimant cross-appeals the Supplemental Decision and Order - Awarding Attorney Fees (93-LHC-0006) of Administrative Law Judge Richard K. Malamphy 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 the law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, on August 12, 1992, suffered traumatic injuries when the hustler he was driving suffered brake failure and hit a ship's well. The parties resolved their differences and claimant received over \$100,000 in a lump sum payment for his temporary total disability from August 13, 1992, through March 10, 1994, and \$500 per week thereafter for his ongoing permanent total disability. On March 31, 1994, the administrative law judge issued an Order remanding the claim to

the district director.

Subsequently, claimant's attorney submitted a fee petition to the administrative law judge, requesting a fee of \$50,399.51 representing in excess of 262 hours of services at an hourly rate of \$155 for claimant's lead attorney, \$100 for claimant's associate counsel, and \$55 for paralegal services, as well as costs of \$15,229.51. Employer filed objections to this petition. The administrative law judge considered employer's objections, reduced the requested hourly rate of \$155 to \$150, and thereafter awarded a fee of \$44,728.26, representing 217 hours at various hourly rates and an unspecified amount for costs.

On appeal, employer challenges the fee awarded by the administrative law judge. In his cross-appeal, claimant contends that the administrative law judge erred in reducing the hourly rate sought by his lead counsel; in all other respects, claimant urges affirmance of the administrative law judge's fee award.

We will initially address claimant's contention that the administrative law judge erred in reducing the requested hourly rate of \$155 to \$150. BRB No. 96-0102A. The administrative law judge, citing *Hawkins v. Reid Associates*, BRB No. 90-1797 (May 11, 1993)(Order)(wherein the Board approved an hourly rate of \$150 for an attorney in the Tidewater, Virginia area), reduced claimant's lead counsel's requested hourly rate from \$155 to \$150. Claimant has not shown that the administrative law judge abused his discretion in this regard; accordingly, we affirm the administrative law judge's reduction in the requested hourly rate to \$150.¹ See *Ross v. Ingalls Shipbuilding, Inc.*, 23 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

In its appeal of the administrative law judge's fee award, employer challenges the number of hours awarded by the administrative law judge, raising objections to specific entries contained in counsel's fee petition and the use of the quarter-hour minimum billing method. BRB No. 96-0102. We agree with employer that the administrative law judge's fee award cannot be affirmed. Specifically, our review of the administrative law judge's decision reveals that the number of requested hours disallowed by the administrative law judge, when subtracted from total number of hours requested, do not result in the number of hours awarded to claimant's counsel. Similarly, subtracting the dollar value of the services disallowed by the administrative law judge from the amount of the fee requested by claimant's counsel does not result in the fee awarded. Lastly, it is unclear from the administrative law judge's decision whether the costs sought by counsel were contained in the amended fee. Consequently, we are unable to compute the fee awarded by the administrative law judge given his discussion of employer's objections and his explanations regarding the reductions which he found to be warranted. We therefore must vacate the administrative law judge's award of an attorney's fee and remand the case for him to re-evaluate the number of hours requested in light of employer's objections, and to fully explain any reductions he makes.

¹We note that the administrative law judge implicitly approved the hourly rate of \$100 sought by claimant's associate counsel.

Employer next challenges counsel's method of billing in increments of one-quarter hour. The Board has upheld such minimum billing increments as within the discretion of the administrative law judge. *See Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986). Thus, we hold that the administrative law judge did not abuse his discretion in awarding fees based on this billing method.

Lastly, employer challenges the award of a fee for claimant's associate counsel's presence at the hearing finalizing the settlement, as well as the paralegal charges contained in counsel's fee petition. In rendering his decision, the administrative law judge did not address employer's objections to claimant's co-counsel's requested fee. *See Abbott v. Director, OWCP*, 13 BLR 1-15 (1989)(Claimant's counsel bears the burden of establishing the need for co-counsel in order for co-counsel's services to be compensable). Moreover, although an administrative law judge may award fees for work performed by non-lawyers if the work is usually performed by attorneys, *see Quintana v. Crescent Wharf & Warehouse Co.*, 18 BRBS 254 (1986), the administrative law judge in the instant case failed to make a specific finding regarding the nature of the claimed paralegal hours. On remand, the administrative law judge must specifically address these objections raised by employer.

Accordingly, the administrative law judge's reduction of counsel's requested hourly rate from \$155 to \$150 and his acceptance of counsel's use of a quarter-hour billing method are affirmed. In all other respects, the administrative law judge's Supplemental Decision and Order is vacated, and the case is remanded for reconsideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge