

ARTHUR SMILEY, JR.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
COOPER/T. SMITH STEVEDORING)	DATE ISSUED:
COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Fletcher E. Campbell, Jr., 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 employer.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.
PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (95-LHC-15 and 95-LHC-1006) of Administrative Law Judge Fletcher E. Campbell, 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).

On July 24, 1993, and June 5, 1994, claimant was involved in two separate accidents while driving a hustler for employer. On April 3, 1995, employer agreed to pay all benefits sought and claimant received payments for temporary total disability from July 25, 1993, to March 27, 1994, in the amount of \$20,162.02 for the first injury and from June 6, 1994, to August 15, 1994, in the amount of \$5,772.09 for the second injury. In July 1995, the administrative law judge issued an Order remanding the claim to the district director.

Claimant's counsel subsequently submitted a fee petition to the administrative law judge, requesting an attorney's fee of \$4,413.45, representing 13.25 hours of attorney services at \$155 per hour, 17.75 hours of attorney services at \$125 per hour, 2.5 hours of paralegal services at \$55 per hour, and expenses in the amount of \$3.45. Employer filed objections to the fee petition. In a Supplemental Decision and Order, the administrative law judge considered employer's objections, reduced the hourly rate sought to \$150 and the number of hours sought to 7.75, and awarded a fee of \$863.75, representing 2 hours of attorney services at \$150 per hour, 5.5 hours of attorney services at \$125 per hour, and .25 hours at \$55 per hour.¹

On appeal, claimant challenges the fee awarded by the administrative law judge. Employer responds in support of the fee award.

Initially, claimant contends that the administrative law judge abused his discretion in not providing claimant's counsel with the opportunity to respond to employer's response concerning settlement of the attorney's fee. We disagree. On September 11, 1995, claimant's counsel requested a period of 30 days to respond to employer's September 5, 1995, response to the attorney's fee request as the parties were attempting to settle the attorney's fee issue. On October 3, 1995, employer attempted to settle the attorney's fee by offering to pay claimant's counsel \$2,347.92 for time spent before the administrative law judge. Claimant's counsel never responded to this offer. The administrative law judge's issuance of an attorney's fee award on October 17, 1995, well after the 30 days requested from September 11, 1995, therefore, was not an abuse of discretion. Moreover, even if claimant's counsel settled his attorney's fee dispute with employer, the parties still were required to seek approval with the administrative law judge. *See Eifler v. Peabody Coal Co.*, 13 F.3d 236, 27 BRBS 168 (CRT)(7th Cir. 1993); *Eaddy v. R.C. Herd & Co.*, 13 BRBS 455 (1981).

Claimant also contends that the administrative law judge erred in disallowing all time after April 4, 1995. We agree. The administrative law judge disallowed all time after April 4, 1995, except .25 hours on July 11, 1995, to request a remand and .25 hours on July 20, 1995, for receipt of the remand order, as no further work was required after employer advised claimant that it would voluntarily pay all outstanding claims on April 3, 1995. Supplemental Decision and Order at 2. The record reflects that counsel's request for time after April 4, 1995, was necessary as claimant thereafter contended that employer had improperly calculated claimant's average weekly wage by not including his container royalty payments and holiday/vacation pay. It was not until June 26, 1995, that claimant's counsel received a letter from opposing counsel agreeing to adjust claimant's average weekly wage to include the container royalty payments and holiday/vacation pay. Therefore, counsel's work after April 4, 1995, was necessary to establish claimant's entitlement to the amount of benefits he received, and the administrative law judge erred in disallowing all time after April 4, 1995. Consequently, the administrative law judge's disallowance of time after April 4,

¹Based on these findings, the administrative law judge should have awarded \$1,001.25 for 2 hours of attorney services at an hourly rate of \$150, 5.5 hours of attorney services at an hourly rate of \$125, and .25 hours of paralegal time at an hourly rate of \$55.

1995, is vacated, and the case is remanded to the administrative law judge for further consideration. On remand, the administrative law judge must determine, with respect to each entry after April 4, 1995, the reasonableness of counsel's request for services performed. *See generally Snowden v. Ingalls Shipbuilding, Inc.*, 25 BRBS 245 (1991)(Brown, J., dissenting on other grounds), *aff'd on recon. en banc*, 25 BRBS 346 (1992)(Brown, J., dissenting on other grounds).

Claimant further contends that the administrative law judge erred in disallowing time for receipt of a transmittal letter on February 8, 1995, as duplicative. Claimant's contention has merit. In disallowing .25 hours on February 8, 1995, for receipt of a transmittal letter, the administrative law judge noted that it appeared that there was more than one entry for receipt of the same letter of transmittal. Supplemental Decision and Order at 2-3. Contrary to the administrative law judge's finding, however, the record reflects that there are three separate transmittal letters dated November 23, 1994, January 24, 1995, and February 6, 1995. The transmittal letter dated February 6, 1995, was most likely received by claimant on February 8, 1995. Consequently, the administrative law judge on remand should modify his award to include this .25 hours at \$125 per hour.

Next, claimant contends that the administrative law judge erred in reducing the requested hourly rate of \$155 to \$150. The administrative law judge, citing *Hawkins v. Reid Associates*, BRB No. 90-1797 (May 11, 1993)(unpublished Order)(Board approved an hourly rate of \$150 for attorneys representing longshore claimants in the Tidewater, Virginia area), reduced claimant's lead counsel's requested hourly rate from \$155 to \$150. Supplemental Decision and Order at 2. As claimant has not shown that the administrative law judge abused his discretion in this regard, we affirm the administrative law judge's reduction in the requested hourly rate to \$150.² *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Lastly, claimant contends that the administrative law judge erred in disallowing hours on December 28, 1994, January 11, 1995, and January 16, 1995. Claimant's contention lacks merit. The administrative law judge properly disallowed the requested time on these dates as it was for work performed before the district director and not before him as the case was not finally transferred to the Office of Administrative Law Judges until February 1995. *See Revoir v. General Dynamics Corp.*, 12 BRBS 524 (1980); Supplemental Decision and Order at 2. The administrative law judge's disallowance of time for the preparation and filing of a Form LS-18 on January 16, 1995, is also affirmed as it was work performed before the district director. *Id.*

Accordingly, the administrative law judge's disallowance of a fee for services rendered after April 4, 1995, is vacated, and the case is remanded to the administrative law judge for further consideration consistent with this opinion. The administrative law judge's disallowance of .25 hours on February 8, 1995, for receipt of a transmittal letter is modified to reflect that the fee award on remand must include time spent for this service. The administrative law judge also should recalculate the fee previously awarded. *See n. 1, supra.* In all other respects, the administrative law judge's Supplemental Decision and Order awarding an attorney's fee is affirmed.

²We note that the administrative law judge implicitly approved the hourly rate of \$125 sought by claimant's associate counsel.

SO ORDERED.

ROY P. SMITH

Administrative Appeals Judge

JAMES F. BROWN

Administrative Appeals Judge

NANCY S. DOLDER

Administrative Appeals Judge