BRB No. 06-0355

SON NGUYEN Claimant-Respondent v. R.L. ELDRIDGE CONSTRUCTION and TEXAS MUTUAL INSURANCE COMPANY Employer/Carrier-Petitioners	)	DATE ISSUED: 11/27/2006 DECISION and ORDER

Appeal of the Supplemental Decision and Order Award Attorney Fees, and the Order Granting and Denying in Part Employer's Motion for Reconsideration of Supplemental Decision and Order on Attorney Fees of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Quentin D. Price (Barton, Price, McElroy & Townsend), Orange, Texas, for claimant.

Peter Thompson (Thompson & Reilley, P.C.), Houston, Texas, for employer/carrier.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Award Attorney Fees, and the Order Granting and Denying in Part Employer's Motion for Reconsideration of Supplemental Decision and Order an Attorney Fees (2004-LHC-00007) of Administrative Law Judge Clement J. Kennington 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 Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On November 26, 2001, claimant fell while descending a ladder and injured his left knee during the course of his employment as a welder. Claimant underwent three surgeries on his left knee to repair a torn meniscus and anterior cruciate ligament. Employer voluntarily paid compensation for temporary total disability from December 10, 2001, to January 3, 2003, and continuing compensation for permanent total disability from January 4, 2003.

In his Decision and Order, the administrative law judge found that claimant's left knee injury reached maximum medical improvement on January 3, 2003, and that claimant is unable to return to his usual employment as a welder. The administrative law judge rejected employer's evidence of suitable alternate employment, and he also found that claimant made a diligent job search. Accordingly, the administrative law judge awarded claimant compensation for permanent total disability from January 4, 2003.[1] 33 U.S.C. §908(a).

Claimant's counsel subsequently submitted a fee petition to the administrative law judge requesting a fee of $45,934.38, representing 23.75 hours of attorney time by Ed Barton at $275 per hour, 119.15 hours of attorney time by Quentin Price at $250 per hour, 1.75 hours of paralegal time at $75 per hour, and costs of $9,484.38. In his supplemental decision, the administrative law judge awarded the requested fee, noting the absence of any objections. Employer filed a motion for reconsideration. In his order addressing this motion, the administrative law judge reduced the hourly rates to $225 for Mr. Barton and to $200 for Mr. Price. The administrative law judge reduced from 12 to six the number of hours awarded each attorney for his attendance at the formal hearing. The administrative law judge found merit to six of employer's 21 allegations of excessive increment billing, and he accordingly reduced by .75 hours the time awarded to Mr. Price. Employer's objections to 26 additional entries as excessive were rejected. Finally, Mr. Price was awarded a fee for four hours for defending the fee application. Accordingly, claimant's counsel were awarded a fee totaling $36,889.38.

On appeal, employer challenges the hourly rates awarded by the administrative law judge. Employer also avers that specific time entries are excessive, and that the

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[1] Employer appealed the administrative law judge's decision, which the Board affirmed. *Nguyen v. Eldridge Construction*, BRB No. 05-0611 (Mar. 30, 2006) (unpublished).

administrative law judge failed to provide a sufficient explanation for the fee award. Claimant responds, urging affirmance of the fee award.

Employer contends that the awarded hourly rates of $225 to Mr. Barton and $200 to Mr. Price are excessive. We reject employer's contention. 20 C.F.R. §702.132 provides that the award of an attorney's fee shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues, 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). The administrative law judge agreed with employer that the requested hourly rates of $275 for Mr. Barton and $250 Mr. Price were excessive. However, he found Mr. Barton entitled to a fee based on an hourly rate of $225, and Mr. Price entitled to a fee based on an hourly rate of $200, pursuant to the factors enumerated in Section 702.132. The administrative law judge acknowledged that these rates were slightly higher than the customary rates awarded, but that the quality of the representation warranted such an award. As employer has not satisfied its burden of showing that the administrative law judge abused his discretion in awarding a fee based on his determination as to appropriate hourly rates given the circumstances of this case, we affirm the rates awarded. *See generally McKnight v. Carolina Shipping Co.*, 32 BRBS 251, 253 (1998) (decision on recon. *en banc*).

Employer next argues that the administrative law judge erred by not reducing 21 one-quarter hour entries to one-eighth of an hour, pursuant to the criteria set forth in the decisions of the United States Courts of Appeals for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990) (unpublished) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995) (unpublished). *See Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). In *Fairley* and *Biggs*, the Fifth Circuit within whose jurisdiction this case arises, stated that, generally, attorneys should charge no more than one-quarter of an hour for preparation of a one-page letter, and one-eighth of an hour for review of a one-page letter. The administrative law judge considered employer's objections and claimant's response thereto; he reduced six of the entries from one-quarter hour to one-eighth of an hour. Upon review of the remaining entries in the fee petition, we hold that the 15 quarter-hour entries allowed by the administrative law judge conform to the criteria set forth by the Fifth Circuit.[2] *Conoco, Inc.,* 194 F.3d 684, 33 BRBS 187(CRT). Therefore, we decline to reduce the administrative law judge's fee award.

[2] Several of the challenged quarter-hour entries are for drafting a one-page letter, which is consistent with the Fifth Circuit's guidelines.

Finally, employer argues that the administrative law judge erred by allowing 26 entries totaling 55.95 hours of attorney time and by not providing any rationale for allowing these entries. In his order, the administrative law judge stated that he reviewed the charges to which employer objected and claimant's response thereto, and he found no basis to reduce the charges. Order at 2. The administrative law judge is required to evaluate the fee petition in light of employer's objections, the degree of claimant's success, the amount of benefits obtained, the quality of the representation, and the complexity of the issues involved in the case. *See generally Hensley v. Eckerhart*, 461 U.S. 424 (1983)*; Moyer,* 124 F.3d 1378, 31 BRBS 134(CRT); *Jensen v. Weeks Marine, Inc.*, 33 BRBS 97 (1999); 20 C.F.R. §702.132(a). Viewed in these terms, the administrative law judge did not err in rejecting employer's objections to claimant's counsel's fee petition. The administrative law judge stated he considered employer's objections, as well as claimant's counsel's response to the objections in which he explained, obviously to the administrative law judge's satisfaction, why employer's objections were unfounded.[3] *See Moyer*, 124 F.3d at 1378, 31 BRBS at 134(CRT); *Pozos v. St. Mary's Hospital & Medical Center*, 31 BRBS 173, 178 (1997) (in awarding fee, administrative law judge may rely on reasoning contained in parties' pleadings in appropriate cases). After review of employer's objections and claimant's counsel's response to employer's objections to the fee petition, we hold that employer has failed to show that the administrative law judge abused his discretion in rejecting its objections in this regard. We therefore affirm the administrative law judge's attorney's fee award.

[3] For example, employer objected to .75 hours hour charged to review its discovery requests, which it asserted were standard requests that claimant's counsel has seen and answered in numerous cases. Employer asserted that one-eighth of an hour is an appropriate charge for this entry. In response, Mr. Price stated that claimant's counsel does not know whether employer's discovery requests comprising 16 pages are standard until after they are reviewed, and, in this case, employer included a request for admissions, which is not a standard discovery request.

Accordingly, the administrative law judge's Supplemental Decision and Order Award Attorney Fees, and the Order Granting and Denying in Part Employer's Motion for Reconsideration of Supplemental Decision and Order on Attorney Fees are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge