U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street
Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)

Issue Date: 19 February 2003

CASE NO. 2002-LHC-1912

OWCP NO. 18-74560

In the Matter of:

RICHARD OLIVEIRA,
Claimant,

vs.

STEVEDORING SERVICES OF AMERICA,
Employer,

and

HOMEPORT INSURANCE CO.,
Carrier.

DECISION AND ORDER AWARDING ATTORNEY'S FEES

This claim arises under the Longshore and Harbor Workers' Compensation Act, as amended ("the Act"), 33 U.S.C. Section 901 *et seq.* The parties have previously settled all substantive issues in this matter, leaving only the issue of attorney's fees to be determined.

On December 6, 2002, Claimant's counsel ("Counsel") filed a petition for attorney's fees, requesting an award in the amount of $7,650.00. Counsel asserted that fees should be awarded based upon the benefits Claimant received between January 2002, and June 16, 2002, totaling approximately $20,000, and not just the six weeks of temporary total disability that was in dispute at the time the parties settled the matter altogether.

On December 20, 2002, Employer filed its Objections to Claimant's Request for Attorneys Fees, arguing that 1) Counsel's request for $7,650.00 is not commensurate with the benefits obtained by Claimant, namely, $5,922.68. Under *Hensley v. Eckerhart*, 461 U.S. 424 (1983), an award of attorney's fees must be commensurate with the degree of success obtained by the claimant; 2) Counsel's hourly rates were excessive. Counsel should be paid at a rate of $175.00 an hour rather

than the requested $225.00 an hour; 3) Counsel's utilization of a quarter hour billing increment is unreasonable and does not reflect the actual time spent prosecuting the claim; and 4) Employer made 36 line by line objections to certain itemizations.

On January 13, 2003, Counsel filed his Final Application for Fees and Costs. Counsel asserted that 1) Claimant was paid in excess of $20,000 through Counsel's efforts, and not just $5, 922.68; 2) Counsel's normal billing rate is $225.00 an hour, based upon his experience and expertise in the longshore arena; 3) the quarter hour billing increment is an accepted billing practice by both the Benefits Review Board, and specifically, Judge Alexander Karst, Chief Judge of the San Francisco Office of Administrative Law Judges; and 4) most of Employer's line by line objections merely restate the objection to the quarter hour billing increment. Counsel responded specifically to objections 11, 19, 23, 28, 31, 33, 34, 35 and 36. These specific objections and responses will be addressed in the Analysis.

On January 24, 2003, Employer filed its Final Objections to Claimant's Request for Attorney's Fees. Employer asserted that pursuant to Section 28(b) of the Act, the amount of benefits obtained by Counsel at the informal level is irrelevant, and Counsel is only entitled to receive attorney's fees based upon the increased amount, or $5,922.68. Again, the amount requested in attorney's fees exceeds the amount Claimant actually received, and therefore, based upon *Hensley, supra*, is unreasonable. Employer further renewed its objection to the quarter hour increment, as well as the rate of $225.00 an hour, and each of its previous line by line objections.

After careful review of the charges submitted by Counsel, as well as the arguments made by both parties, I find that Counsel is entitled to Attorney's fees in the amount of $5,950.00, for 29.75 hours, payable at the hourly rate of $200.00 an hour.

ANALYSIS

Section 702.132 of the regulations provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done and shall take into account: 1) the quality of the representation; 2) the complexity of the legal issues involved; and 3) the amount of benefits awarded. See 20 C.F.R. §702.132. See also, *Brown v. Marine Terminal Corp.*, 30 BRBS 29 (1996) (en banc); *Newport News Shipbuilding & Dry Dock Co. v. Graham*, 573 F.2d 167 (4th Cir. 1978), *cert. denied*, 439 U.S. 979 (1978). In *George Hyman Construction Co. v. Brooks*, 963 F.2d 1532 (D.C. Cir. 1992), the court found that attorney's fee awards in Longshore Act proceedings are subject to the standards that were set forth in the Supreme Court's decision in *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In *Hensley*, the Supreme Court held that the calculation of attorney's fee awards

should ordinarily begin by multiplying the number of hours "reasonably" worked by a "reasonable" hourly fee in order to determine an amount which is known as the "lodestar."[1] 461 U.S. at 435.

A. General Objections to Fee Petition

1. Fees Are Commensurate with Success Obtained

Employer asserts that Counsel's fees should be commensurate with the benefit actually obtained by Claimant, namely $5,922.68. Thus an award of any amount greater than that of Claimant's would be unreasonable based upon the reasoning in *Hensley, supra*. Counsel asserts that Claimant was awarded over $20,000 in total, and it is this amount that the court should consider when assessing the reasonableness of any fee award. Employer is correct in its assertion that the proper amount to be considered does not include any award obtained at the informal level, pursuant to Section 28(b) of the Act. However, Employer's assertion that *Hensley* precludes an award of any amount greater than that of Claimant's actual award is disingenuous. Hensley dictates that an award of attorney's fees should properly reflect the results obtained, but does not specify that those results must be solely of a monetary value. Here, Claimant received benefits for the full six weeks that remained in dispute following the informal award, as a direct result of Counsel's efforts. This strikes the court as more than just a minor victory for Claimant. Furthermore, the original amount offered as a settlement was approximately $3000 less than the amount that Counsel's efforts finally secured for Claimant. The final calculation of attorney's fees by this Court does properly reflect the results obtained by Counsel.

2. Hourly Rate

Respondents argue that Counsel's $225 hourly rate is excessive considering the simplicity of the issue in this case, as well as the customary rate charged in the community, and suggest that an hourly rate of $175 would be more appropriate. Counsel contends that $225 per hour is reasonable considering Counsel's twenty-two years of experience with longshore claims, and that the hourly fee is his regularly billed hourly rate.

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[1] In subsequent decisions, the Court has held that in determining the number of hours reasonably worked and the amount of a reasonable hourly fee, a factfinder should consider such factors as the novelty and complexity of the issues, the special skill and experience of counsel, the quality of the representation and the results obtained. See *Blum v. Stenson,* 465 U.S. 886 (1984); *Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air,* 478 U.S. 546 (1986).

The Court notes that awarding fees at the hourly rate of $200 and above is generally reserved for the most experienced and proficient Longshore attorneys. See *Daniels v. General Construction, Co.,* 33 BRBS 1421 (ALJ)(1999)(Attorney John Hillsman, considered one of the pre-eminent attorneys in the Longshore field with over 21 years of experience, awarded fees at the hourly rate of $225.00); *Salcido v. Long Beach Container Terminals,* 32 BRBS 431 (ALJ)(1998)(hourly rate of $200.00 awarded to Diane Middleton, Esq., an attorney with 20 years of experience representing Longshore claimants in the Los Angeles/Long Beach area); *Dundov v. San Pedro Boat Works,* 34 BRBS 189 (ALJ)(2000)(hourly rate of $175.00 awarded to Marilyn Green, Esq., workers' compensation specialist and partner at Long Beach firm that specializes in longshore law). Based on this survey, and the fact that the issue in this case was not one of great complexity, I find that the hourly rate of $200 is reasonable under the circumstances.

3. Quarter-Hour Billing Method

Respondents argue that Counsel's quarter-hour billing method results in an overinflation of time, as determined by the United States Court of Appeals for the Fifth Circuit. See *Ingalls Shipbuilding, Inc. v. Director, OWCP,* No. 89-4459 (5th Cir. July 25, 1990)(Unpublished); *Bullock v. Ingalls Shipbuilding, Inc.,* 29 BRBS 131 (1995). The Court rejects Respondents' argument as Counsel's use of quarter-hour billing increments is reasonable and in compliance with the applicable regulation, 20 C.F.R.§ 702.132. See *Biggs v. Ingalls Shipbuilding, Inc.,* 27 BRBS 237 (1993); *Snowden v. Ingalls Shipbuilding, Inc.,* 25 BRBS 245, 252 (1991), *aff'd on recon (en banc)* 25 BRBS 346. Respondents also overlook the fact that *Ingalls* and *Bullock* are Fifth Circuit decisions which carry no precedential value outside of that circuit. For the foregoing reasons, the undersigned holds that the quarter-hour billing method is appropriate and consistent with the regulations, and therefore, Respondents' general objection is denied.

However, I do find it unreasonable to bill for a quarter hour in certain particular circumstances, such as sending a one line email, reviewing a one-paragraph letter, or making a quick telephone call, as Counsel has done in this case. Based on this finding, some of Counsel's itemizations have be reduced to .10 hours rather than the billed .25 hours.

B. Specific Objections to Fee Petition

To date, all of Employers' thirty-six specific objections remain.

#1 - Entry dated May 13, 2002, wherein counsel itemizes .25 hours for "letter to def atty."

OBJECTION SUSTAINED. Entry reduced to .10 hours, as it is unreasonable to bill a quarter hour to send a one line email.

#2 - Entries dated May 13, 2002 wherein counsel itemizes two separate entries for .25 hours for "letter from def atty." Employer asserts that only one letter was sent, thus these entries are duplicative.
OBJECTION SUSTAINED. Counsel shall be awarded .10 hours for this service.

#3 - Entries dated June 6, 2002, wherein counsel itemizes .25 hours for "letter from def atty" and .50 hours for "letter from def atty w/report."
OBJECTION SUSTAINED. Counsel shall be awarded .25 hours for this service.

#4 - Entry dated June 10, 2002, wherein counsel itemizes .25 hours for "letter to Dr. Smith."
OBJECTION SUSTAINED. Counsel has failed to give any description of the letter drafted to Dr. Smith. This entry shall be reduced in its entirety.

#5 - Entry dated June 17, 2002, wherein counsel itemizes .25 hours for "medical."
OBJECTION SUSTAINED. Counsel has failed to give any description of the services performed. This entry shall be reduced in its entirety.

#6 - Entry dated July 10, 2002, wherein counsel itemizes .25 hours for "letter from def atty."
OBJECTION SUSTAINED. Counsel shall be awarded .10 hours for this service.

#7 - Entry dated July 15, 2002, wherein counsel itemizes .25 hours for "telephone call from client."
OBJECTION SUSTAINED IN PART. Counsel has failed to give any detail as to the nature of the call. Counsel shall be awarded .10 hours for this service.

#8 - Entry dated July 29, 2002, wherein counsel itemizes .25 hours for "medical."
OBJECTION SUSTAINED. For the reasons stated in Objection #5, this entry shall be reduced in its entirety.

#9 - Entries dated August 2, 2002, wherein counsel claims entitlement to .25 hours for "letter from def atty" and .25 hours for "notice of clt depo."
OBJECTION SUSTAINED. Counsel shall be awarded .10 hours for this service.

#10 - Entry dated August 7, 2002, wherein counsel itemizes .25 hours for "letter to client."
OBJECTION DENIED. Employer asserts this entry should be reduced in its entirety, stating that there is no indication as to the nature of this telephone call. However, this entry is for a letter, not a telephone call. Counsel shall be awarded .25 hours for this service.

#11 - Entry dated August 18, 2002, wherein counsel itemizes a total of 3 hours in preparing for and attending Claimant's deposition.
OBJECTION DENIED. Counsel is entitled to spend a reasonable amount of time preparing his client for the taking of a deposition. Counsel has sufficiently explained the need for the amount of time spent. Counsel shall be awarded 3 hours for this service.

#12 - Entry dated August 12, 2002, wherein counsel itemizes .25 hours for "telephone call from client."
OBJECTION SUSTAINED IN PART. For the reasons stated in Objection #7, Counsel shall be awarded .10 hours for this service.

#13 - Entry dated , August 29, 2002, wherein counsel itemizes .25 hours for "telephone call to client."
OBJECTION SUSTAINED IN PART. For the reasons stated in Objection #7, Counsel shall be awarded .10 hours for this service.

#14 - Entry dated September 3, 2002, wherein counsel itemizes .25 hours for "telephone call from client."
OBJECTION SUSTAINED IN PART. For the reasons stated in Objection #7, Counsel shall be awarded .10 hours for this service.

#15 - Entry dated September 9, 2002, wherein counsel itemizes .25 hours for "telephone call from client."
OBJECTION SUSTAINED IN PART. For the reasons stated in Objection #7, Counsel shall be awarded .10 hours for this service.

#16 - Entry dated September 16, 2002, wherein counsel itemizes .25 hours for "telephone call to/from client."
OBJECTION SUSTAINED IN PART. For the reasons stated in Objection #7, Counsel shall be awarded .10 hours for this service.

#17 - Entry dated September 30, 2002, wherein counsel itemizes .25 hours for "telephone call from client."
OBJECTION SUSTAINED IN PART. For the reasons stated in Objection #7, Counsel shall be awarded .10 hours for this service.

#18 - Entry dated October 1, 2002, wherein counsel itemizes .25 hours for "telephone call from client."
OBJECTION SUSTAINED IN PART. For the reasons stated in Objection #7, Counsel shall be awarded .10 hours for this service.

#19 - Entries dated October 2, 2002, wherein counsel requests 1.50 hours for "clt mtg re discovery; review file" and October 3, 2002, entry, wherein counsel claims entitlement to .50 hours for "prepare responses to discovery."
OBJECTION DENIED. Employer requests that these entries be reduced from 3 hours to 2 hours. Counsel has only billed for 2.0 hours total for these two entries. Counsel shall be awarded 2 hours for this service.

#20 - Entry dated October 9, 2002, wherein counsel itemizes .25 hours for "letter from def atty."
OBJECTION SUSTAINED. Counsel shall be awarded .10 hours for this service.

#21 - Entry dated October 10, 2002, wherein counsel itemizes .25 hours for "telephone call from def atty."
OBJECTION DENIED. Counsel is entitled to be compensated for attempts at settlement. Counsel shall be awarded .25 hours for this service.

#22 - Entry dated October 15, 2002, wherein counsel itemizes .25 hours for "letter to def atty."
OBJECTION DENIED. Counsel is entitled to be compensated for attempts at settlement. Counsel shall be awarded .25 hours for this service.

#23 - Entries dated October 15, 2002, wherein counsel itemizes 3.00 hours for "review file for rtp, t/c to client" and "prepare responses to discovery."
OBJECTION SUSTAINED. Counsel shall be awarded 1 hour for this service.

#24 - Entry dated October 16, 2002, wherein counsel itemizes .25 hours for "telephone call from client."
OBJECTION SUSTAINED IN PART. For the reasons stated in Objection #7, Counsel shall be awarded .10 hours for this service.

#25 - Entry dated October 22, 2002, wherein counsel itemizes .25 hours for "telephone call to def atty."
OBJECTION DENIED. Counsel is entitled to be compensated for attempts at settlement. Counsel shall be awarded .25 hours for this service.

#26 - Entries dated November 4, 2002, wherein counsel itemizes .50 hours for "telephone call to/frm def atty (2x)," November 6, 2002, wherein counsel claims .25 hours for "telephone call to/from def atty," and entry dated November 7, 2002, wherein counsel claims .25 hours for "telephone call to def atty."
OBJECTION SUSTAINED, IN PART. Counsel shall be awarded .50 hours for this service.

#27 - Entry dated November 12, 2002, wherein counsel itemizes .25 hours for "telephone call from client."
OBJECTION SUSTAINED IN PART. For the reasons stated in Objection #7, Counsel shall be awarded .10 hours for this service.

#28 - Entry dated November 13, 2002, wherein counsel itemizes 1.25 hours for "clt mtg prep."
OBJECTION DENIED. Counsel has sufficiently explained the necessity of spending 1.25 hours preparing Claimant for trial. Counsel shall be awarded 1.25 hours for this service.

#29 - Entries dated November 13, 2002, wherein counsel itemizes .25 hours for "telephone call to/from def atty (2x)," and .25 hours for "fax/ltr from def atty."
OBJECTION DENIED. Counsel is entitled to payment for time spent in preparation of a joint pre-trial conference report. Counsel shall be awarded .50 hours for this service.

#30 - Entry dated November 14, 2002, wherein counsel itemizes .25 hours for "telephone call to def atty."
OBJECTION DENIED. Counsel is entitled to be compensated for attempts at settlement. Counsel shall be awarded .25 hours for this service.

#31 - Entry dated November 15, 2002, wherein counsel itemizes 2.00 hours to "prep clt for trial."
OBJECTION DENIED. Employer requests that this entry is excessive and should be reduced to 1 hour**.** Counsel has sufficiently explained the necessity of spending 2 hours preparing Claimant for trial. Counsel shall be awarded 2 hours for this service.

#32 - Entry dated November 15, 2002, wherein counsel itemizes .25 hours for "telephone call to Dr. Ritter."
OBJECTION SUSTAINED. Counsel has failed to identify Dr. Ritter. This entry shall be reduced in its entirety.

#33 - Entry dated November 18, 2002, wherein counsel itemizes 2 hours for "travel to, attend cald call."
OBJECTION DENIED. Counsel shall be awarded 2.0 hours for this service.

#34 - Entry dated November 19, 2002, wherein counsel itemizes 1 hour for "researching ada/Longshore Act."
OBJECTION DENIED. This Court instructed the parties to conduct this research and prepare arguments based on the findings. Counsel shall be awarded 1.0 hour for this task.

#35 - Entry dated November 20, 2002, wherein counsel itemizes 2.25 hours for "travel to, obtain and read depo trial transcript of Robert Kelly."
OBJECTION DENIED. Counsel explained that he had requested a re-opening of the trial record to allow Claimant's attorney to submit the subject deposition. This Court reserved ruling on that request pending the decision of Employer whether or not to pay Claimant the benefits owed. Counsel shall be awarded 2.25 hours for this service.

#36 - Entry dated November 27, 2002, wherein counsel itemizes .75 hours to "prepare fee petition."
OBJECTION DENIED. The time documented is not an unreasonable amount of time to prepare a fee petition. Counsel shall be awarded .75 hours for this service.

Based on the foregoing, Counsel is entitled to attorney's fees of 29.75 hours at the hourly rate of $200.00, or $5,950.00.[2]

ORDER

Employer shall pay Claimant's counsel fees of $5,950.00.

IT IS SO ORDERED.

A

ANNE BEYTIN TORKINGTON
Administrative Law Judge

ABT:lc

[2] This figure includes 2.5 hours as requested by Counsel for reviewing Employer's objections, attempts to meet and confer, and preparation of his final petition.