

MELVIN WATTS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
TODD SHIPYARDS CORPORATION	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

On remand from the United States Court of Appeals for the Ninth Circuit.

James McAdams (Magana, Cathcart, McCarthy & Pierry), Wilmington, California, for claimant.

James D. Coalwell (Samuelson, Coalwell & Gonzalez), San Pedro, California, for self-insured employer.

Before: SMITH and DOLDER, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.\*

PER CURIAM:

This case is on remand from the United States Court of Appeals for the Ninth Circuit. In the proceedings before the Board, employer appealed the Compensation Order-Award of Attorney Fees (Case No. 18-22040) of District Director<sup>1</sup> Edward Bounds 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). An award of an attorney's fee 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 Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant sustained an injury on May 18, 1984, while in the course of his employment as a

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<sup>1</sup>Pursuant to Section 702.105 of the regulations, 20 C.F.R. §702.105, the term "district director" has replaced the term "deputy commissioner" used in the statute.

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

sheetmetal worker. Employer commenced voluntary temporary total disability benefits under the Act on May 22, 1984. Claimant subsequently filed his claim for permanent total disability benefits under the Act on October 15, 1984. Thereafter, on October 17, 1984, employer filed a notice of controversion challenging the nature and extent of disability, and the need, nature and frequency of medical treatment; additionally, employer sought relief pursuant to Section 8(f) of the Act, 33 U.S.C. §908(f). At a February 26, 1986 informal conference with the district director, employer and claimant stipulated that claimant is entitled to permanent total disability compensation. Thereafter, although no party raised the issue, the district director determined that employer was liable for the cost-of-living adjustments mandated by 33 U.S.C. §910(f) for permanent total disability benefits from the date of claimant's maximum medical improvement, December 10, 1984. Claimant's counsel was subsequently awarded \$5,000 in attorney's fees in an August 26, 1987 Compensation Order.

Employer appealed the district director's award of an attorney's fee to the Board, contending that it is not liable for an attorney's fee under either Section 28(a) or Section 28(b) of the Act, 33 U.S.C. §928(a), (b). In its Decision and Order, the Board affirmed the district director's assessment of an attorney's fee against employer pursuant to Section 28(b) of the Act. *Watts v. Todd Shipyards Corp.*, BRB No. 87-2544 (Sept. 28, 1989)(unpublished). Because the Board affirmed the district director's attorney's fee award pursuant to Section 28(b), it did not address employer's contentions regarding its liability under Section 28(a). Employer's subsequent motion for reconsideration was denied by the Board on January 31, 1990.

Employer appealed the Board's decision to the United States Court of Appeals for the Ninth Circuit, arguing that an attorney's fee award was not authorized because it did not decline to pay permanent total disability benefits after the informal conference. The Ninth Circuit reversed the Board's determination that an attorney's fee had been properly awarded under Section 28(b), and remanded the case for a determination as to whether such fees could be awarded pursuant to Section 28(a) of the Act. *Todd Shipyards Corp. v. Director, OWCP*, 950 F.2d 607, 25 BRBS 65 (CRT)(9th Cir. 1991).

Subsequent to the Ninth Circuit's issuance of its decision in this case, employer filed a motion before the Board, stating that the parties have reached agreement with respect to the issue of an attorney's fee, and requesting that the case be remanded to the Office of the District Director for the required approval of the agreed to disposition of this issue. We hereby grant employer's motion and remand this case to the Office of the District Director for further proceedings. 20 C.F.R. §802.405.

Accordingly, the case is remanded to the Office of the District Director for further proceedings.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

LEONARD N. LAWRENCE  
Administrative Law Judge