

BRB No. 97-1246

JORGE DANIEL	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
DODGE ISLAND TERMINAL	)	
CORPORATION	)	
	)	
and	)	
	)	
HARTFORD INSURANCE GROUP	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Compensation Order - Award of Attorney Fees of Jeana F. Jackson, District Director, United States Department of Labor.

Clifford R., Mermell (Gillis & Mermell, P.A.), Miami, Florida, for claimant.

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

PER CURIAM:

Claimant appeals the Compensation Order - Award of Attorney Fees (6-143977) of District Director Jeana F. Jackson 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).

Claimant, a machine operator, suffered an injury to his left foot when it became caught between a pallet jack and a fork-lift on February 3, 1992. Employer, although initially compensating claimant under the Florida Workers' Compensation

Act, subsequently conceded claimant's coverage under the Act and paid claimant three weeks of temporary total, followed by permanent partial, disability benefits. Claimant returned to his usual employment on June 10, 1992. Employer ultimately paid claimant additional compensation under the schedule for a 100 percent disability to his little toe.

Thereafter, claimant's attorney submitted a fee petition to the district director seeking a fee of \$5,250, representing 21 hours of services rendered at an hourly rate of \$250. In response, employer conceded its liability for a fee, but challenged both the hourly rate and the number of hours sought by counsel. In her Compensation Order, the district director reduced the hourly rate sought by counsel to \$125, eliminated all hours incurred prior to October 26, 1993, the date upon which she determined a controversy arose, and disallowed 1.5 hours sought for the preparation of claimant's fee petition; accordingly, the district director awarded counsel a fee of \$575, representing 4.6 hours at an hourly rate of \$125.

Claimant now appeals, challenging the district director's reduction in both the hourly rate and the number of hours sought by counsel. Employer has not responded to this appeal.

Claimant initially contends that the fee awarded by the district director is so low as to drive competent counsel from the field. In considering counsel's fee petition, the district director indicated that she had taken into consideration the factors contained in the regulation found at 20 C.F.R. §702.132, and determined that the hourly rate of \$250 sought by claimant's counsel was excessive considering the lack of complexity of legal issues in the instant case; accordingly, the district director awarded claimant's counsel an hourly rate of \$125. As the complexity of the issues is one of the relevant factors which should be considered when awarding a fee, we affirm the rate awarded by the district director to counsel, as claimant has not shown that the district director abused her discretion in this regard. See *Thompson v. Lockheed Shipbuilding & Const. Co.*, 21 BRBS 94 (1988); see also *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Next, claimant contends that the district director erred in denying a fee for services rendered prior to October 26, 1993, the date upon which she determined that a controversy arose. Pursuant to Section 28(b) of the Act, 33 U.S.C. §928(b), when an employer voluntarily pays or tenders benefits and thereafter a controversy arises over additional compensation due, the employer will be liable for an attorney's fee if the claimant succeeds in obtaining greater compensation than that agreed to by employer. See *Tait v. Ingalls Shipbuilding, Inc.*, 24 BRBS 59 (1990). In the instant case, employer voluntarily paid claimant temporary disability benefits through

March 9, 1992. At some time following this date, a controversy arose between the parties over the amount, if any, of additional compensation due claimant, and employer ultimately paid claimant disability compensation under the schedule for a 100 percent disability to his little toe.

In challenging the district director's summary finding that a controversy arose on October 26, 1993, claimant contends that a controversy arose from the date of injury as evidenced first by employer's reluctance to compensate claimant under the Act rather than the state statute, secondly by the need to obtain authorization from employer for additional medical consultations, and finally by claimant's obtaining greater compensation than that offered by employer. Employer, before the district director, asserted that no controversy arose until October 26, 1993, when claimant's attorney contacted it by telephone seeking additional benefits for claimant.<sup>1</sup>

In denying all of the hours of services rendered by claimant's counsel prior to the date at issue here, the district director merely stated, without addressing the parties differing positions on this issue, that a controversy arose on October 26, 1993. See Order at 1. The date that a controversy arose in the instant case, however, cannot be determined from the file forwarded to the Board, and the parties have contrasting interpretations of the events occurring prior to October 26, 1993. As this disputed issue requires specific findings, we must vacate the district director's conclusion and remand this case to the district director for reconsideration of the date a controversy arose over claimant's entitlement to additional compensation and an explanation of the rationale behind her determination. 33 U.S.C. §921(b)(3); 20 C.F.R. §802.301.

Accordingly, the district director's determination that a controversy arose on October 26, 1993, is vacated, and the case is remanded for further findings in accordance with this opinion. In all other respects, the district director's Compensation Order is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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<sup>1</sup>In contrast, claimant's counsel describes this telephone call as one in which he expressed an interest in resolving the claim.

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge