

BRB No. 06-0253

SON T. NGUYEN)
)
 Claimant-Respondent)
)
 v.)
)
 ELDRIDGE CONSTRUCTION) DATE ISSUED: 08/29/2006
)
 and)
)
 TEXAS MUTUAL INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Petitioners) DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fee of Chris Gleasman, District Director, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney's Fee (Case No. 8-121419) of District Director Chris Gleasman rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 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 injured his left knee during the course of his employment as a welder for employer on November 26, 2001. In his Decision and Order, the administrative law judge rejected employer's evidence regarding the availability of suitable alternate employment and awarded claimant compensation for permanent total disability from January 4, 2003, pursuant to Section 8(a) of the Act, 33 U.S.C. §908(a).¹ On May 12, 2005, claimant's counsel filed an attorney's fee petition with the district director, requesting a fee for 16.75 hours of work performed before the district director at an hourly rate of \$275 and 1.25 hours of work performed at an hourly rate of \$250. The district director awarded the requested fee of \$4,918.75 in a Compensation Order filed on November 2, 2005.

On appeal, employer contends that the district director's failure to allow employer a reasonable time to respond to claimant's counsel's fee petition constitutes a denial of due process. Additionally, employer challenges the hourly rates and the amount of time awarded to counsel by the district director. Claimant responds, urging affirmance of the district director's fee award in its entirety.

Employer contends that the district director's failure to allow it an opportunity to file its objections to claimant's counsel's fee petition deprived employer of due process. We disagree. Due process requires that employer be given notice and opportunity to be heard at a reasonable time and in a reasonable manner. *Goldberg v. Kelly*, 397 U.S. 254 (1970). These constitutional due process considerations, which require that employer have notice of the attorney's fee request and a reasonable time to respond to it, have been long recognized in both circuit court and Board case law. *See Todd Shipyards Corp. v. Director, OWCP*, 545 F.2d 1176, 5 BRBS 23 (9th Cir. 1976); *Codd v. Stevedoring Services of America*, 32 BRBS 143 (1998); *Green v. Atlantic Container Lines, Ltd.*, 2 BRBS 385 (1975); *see also Atlantic & Gulf Stevedores, Inc. v. Director, OWCP*, 542 F.2d 602, 4 BRBS 79 (3^d Cir. 1976). In the instant case, employer acknowledges that claimant's counsel filed his fee request with the district director on or about May 12, 2005, *see* Employer's Brief at 2, and it does not dispute the district director's finding that its carrier was provided with that fee petition for its review. *See* Compensation Order at 2; *see also* 33 U.S.C. §935. Employer thereafter took no action regarding claimant's counsel's fee request for approximately six months until it faxed a letter to the district director on November 2, 2005, the same day that the district director filed his Compensation Order, seeking an additional two weeks in order to file its objections. Thus, employer received notice that a fee request had been filed by claimant's counsel with the district director and a period of approximately six months elapsed before the district director issued his Order on November 2, 2005. On these facts, employer has not established it lacked a reasonable opportunity to file a response to counsel's fee petition

¹ Employer appealed this decision to the Board, which subsequently affirmed the administrative law judge's award of ongoing permanent total disability benefits to claimant. *See Nguyen v. Eldridge Constr.*, BRB No. 05-0611 (Mar. 30, 2006)(unpub.).

or to seek an extension of time in which to do so.² We therefore reject employer's contention of error in this regard and, as the district director considered the relevant regulatory criteria in addressing claimant's counsel's fee request, his award of an attorney's fee to claimant's counsel is affirmed. 33 U.S.C. §928; 20 C.F.R. §702.132.

Accordingly, the Compensation Order Award of Attorney's Fee of the district director is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

² The rules of practice before the Board and Office of Administrative Law Judges, respectively, provide that responses to motions must be filed within 10 days of receipt or service. *See* 20 C.F.R. §802.219; 29 C.F.R. §18.6. While not specifically applicable to a motion for fees filed with the district director, these rules are indicative of the amount of time considered "reasonable" for a party to respond to a motion. Responses to other filings generally must be made within 30 days. *See* 20 C.F.R. §802.212; 29 C.F.R. §18.5. In all circumstances, the time runs from service of a pleading or a party's receipt; there is no provision requiring action by the district director, administrative law judge or Board in order for response time to commence.