

JUAN ARJONA)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INTERPORT MAINTENANCE)	DATE ISSUED:
)	
and)	
)	
HARTFORT ACCIDENT AND)	
INDEMNITY COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Michael H. Schoenfeld, Administrative Law Judge, United States Department of Labor.

Richard A. Cooper (Fischer Brothers), New York, New York, for employer/ carrier.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (88-LHC-458) of Administrative Law Judge Michael H. Schoenfeld 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).

This case has a protracted procedural history. Administrative Law Judge Schoenfeld initially found that claimant is a maritime employee and was injured on a covered situs. 33 U.S.C. §§902(3), 903(a). The administrative law judge remanded the case to the district director for consideration of the disability issues raised by the parties. Employer appealed this decision, BRB No. 90-1761, and the Board dismissed the appeal as interlocutory. *Arjona v. Interport Maintenance*, 24 BRBS 222 (1991). Thereafter, the administrative law judge issued a Supplemental Decision and Order awarding claimant's counsel an attorney's fee of \$3,195, payable by employer. This decision is the subject of employer's appeal in the instant case. BRB No. 91-1664. By Order dated January

29, 1992, the Board denied the motion of the Director, Office of Workers' Compensation Programs, to dismiss this appeal. The Board, however, held the briefing schedule in abeyance until a fully dispositive compensation order is issued. Employer was directed to notify the Board when this order issued.

While this appeal was pending before the Board, the parties stipulated to the issues concerning claimant's entitlement to disability benefits. The district director issued a Compensation Order embodying these stipulations on October 8, 1991. Employer filed a notice of appeal of this Order seeking to have its original appeal of the jurisdictional issues reinstated and consolidated with its appeal of the fee order, or to have its new appeal given a new number and consolidated with its fee appeal. The Board assigned employer's appeal BRB No. 92-1984. By Order dated September 23, 1992, the Board stated it does not have jurisdiction to consider an appeal from the district director's compensation order, and construed employer's appeal as a timely request for a hearing before an administrative law judge. Employer's appeal in BRB No. 92-1984 was dismissed and the Board denied employer's request to reinstate BRB No. 90-1761.

The case was set for a hearing before the administrative law judge, but prior thereto the parties again stipulated to the issues concerning claimant's entitlement to disability benefits. As part of this agreement, employer agreed to pay claimant's counsel as attorney's fee of \$1,800. Administrative Law Judge Reno Bonfanti approved the stipulations in a Decision and Order filed on May 3, 1994.¹

In view of the fact that the parties have now stipulated to an attorney's fee and the administrative law judge has approved the stipulations, employer's appeal of Administrative Law Judge Schoenfeld's 1991 fee award is moot.

¹In this Decision and Order Judge Bonfanti noted that the issues as to status and situs have been preserved for appeal. We note that no appeal has been filed from this Decision and Order.

Accordingly, employer's appeal in BRB No. 91-1664 is dismissed as moot.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge