

W.C.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING)	DATE ISSUED: 09/18/2008
AND DRY DOCK COMPANY)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Award of Attorney's Fee of T.A. Magyar, District Director, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden, L.L.P.), Norfolk Virginia, for claimant.

Christopher R. Hedrick (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Employer appeals the Award of Attorney's Fee (Case No. 05-124688) of District Director T.A. Magyar 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 determinations of the district director must be affirmed unless they are shown to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Sans v. Todd Shipyard Corp.*, 19 BRBS 24 (1986).

The facts of this case are not in dispute: claimant's doctor rated him as having a 30 percent impairment to his left lower extremity on September 12, 2007. On September 26, 2007, employer filed a notice of controversion; nevertheless, on October 22, 2007, after its medical expert reviewed claimant's doctor's report, employer voluntarily began paying claimant permanent partial disability benefits at a compensation rate of \$510.71 per week. No order to pay benefits was ever issued. Thereafter, claimant's counsel filed

a request for an attorney's fee for work performed before the district director pursuant to Section 28(c), 33 U.S.C. §928(c).¹ Attached to the fee petition was a document signed by claimant indicating his agreement to pay counsel an attorney's fee in the amount of \$3,000. After approving the amount of the fee claimant agreed to pay, and noting claimant is financially able to pay it, the district director ordered "such sum to be a lien on compensation at the rate of \$100 biweekly." The district director denied employer's motion for reconsideration.

Employer appeals the fee award, contending the district director erred in ordering it to pay a portion of claimant's benefits to counsel as payment of the attorney's fee. Claimant responds, arguing that employer does not have standing to appeal because it is not adversely affected or aggrieved pursuant to Section 21(b)(3), 33 U.S.C. §921(b)(3). For the reasons set forth below, we need not address the issues raised by the parties. We modify the district director's order to provide that claimant must pay his counsel the approved amount directly.

Claimant signed an "Attorney Fee Statement" which provided the following:

I understand my attorney, Gregory E. Camden, requests an attorney's fee for the work he has done on my behalf regarding my injury of November 27, 2006 and the permanent partial disability rating to my left lower extremity. I understand that I will be due a total of \$44,125.34 for the rating of 30%.

I agree my attorney is entitled to an attorney's fee for the work he has done on my (sic) behalf. I agree to the requested attorney's fee of \$3,000.00. I understand the Department of Labor will issue an Order requiring payment of the attorney's fee.

Counsel's cover letter to the district director stated that employer voluntarily paid benefits and that claimant agreed to pay the attorney's fee from his benefit payments. Counsel then requested:

I would appreciate your entering an award for an attorney's fee of \$3,000 to be paid by [claimant] directly. Please note that these payments will be made by [claimant] to my office and since the Stipulation agreement was

¹Section 28(c) provides for a claimant to be held liable for an attorney's fee when neither Section 28(a) nor Section 28(b), 33 U.S.C. §928(a), (b), applies.

not submitted by the employer, the payments need not be deducted directly from my client's compensation checks.

As claimant and his attorney agreed to claimant's direct liability for the attorney's fee out of claimant's compensation payments, and such liability is consistent with Section 28(c), we vacate the order for employer to pay a portion of the compensation directly to counsel. The district director's order is modified to reflect claimant's liability for his attorney's fee of \$3,000. 33 U.S.C. §928(c).

Accordingly, the district director's fee award is modified to reflect that claimant is directly liable to his attorney for the approved attorney's fee of \$3,000.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge