

BRB No. 07-0973

L.C.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
THE PRAGMA CORPORATION	)	DATE ISSUED: 04/30/2008
	)	
and	)	
	)	
ACE, U.S.A.	)	
	)	
Employer/Carrier-	)	
Petitioners	)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees of Richard V. Robilotti, District Director, United States Department of Labor.

John C. Lynch (Macleay, Lynch, Gregg & Lynch, P.C.), Washington, D.C.,  
for claimant.

Kenneth M. Simon (Flicker, Garelick & Associates, LLP), New York, New  
York, 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 Fees (Case No. 02-125596) of District Director Richard V. Robilotti 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980). This case has been before the Board previously.

Claimant sought benefits under the Act for pulmonary fibrosis and its complications which she alleged resulted from her exposure to environmental pollutants while working as an attorney for employer in Almaty, Kazakhstan, from November 1997 through May 1998. In her initial Decision and Order, the administrative law judge denied claimant's claim, finding that claimant's condition was not the result of her employment exposures. Claimant appealed this decision, but before the Board could address the appeal, claimant moved for modification pursuant to 33 U.S.C. §922, and the Board dismissed the appeal. [*L.C.*] v. *Pragma Corp.*, BRB No. 01-0739 (Sept. 25, 2001).

On modification, the administrative law judge found that claimant's condition was work-related and she awarded claimant disability and medical benefits. The administrative law judge also awarded claimant's counsel a fee in the amount of \$160,140, plus \$14,779.51 in costs. Employer appealed, and the Board affirmed the administrative law judge's finding that claimant's pulmonary fibrosis was caused by her employment in Kazakhstan and the award of temporary total disability and medical benefits. The Board vacated the fee awarded to claimant's counsel by the administrative law judge, and remanded the case for further consideration of the fee petition and the objections thereto. [*L.C.*] v. *Pragma Corp.*, BRB No. 03-0429 (Mar. 19, 2004)(unpub.).

Claimant's counsel also filed a fee petition for work performed before the district director. Claimant's counsel requested a fee in the amount of \$108,285, representing 533.6 hours at the hourly rate of \$200, for legal services performed between May 1999 and March 2003, and \$1,425, representing 28.5 hours at the hourly rate of \$50, for legal assistant services performed on behalf of claimant. Employer filed objections to counsel's fee request. After noting counsel's application for a fee in the amount of \$108,285, the district director awarded claimant's counsel an "interim" fee of \$50,000. Employer appealed this award to the Board. On appeal, the Board vacated the district director's fee award and remanded the case as the award was cursory and the district director did not address either the objections raised by employer or provide a rationale for the fee awarded.

Prior to the district director's consideration of the fee request on remand, claimant's counsel requested an additional fee for services performed before the district director for a total fee request of \$120,545. Employer again submitted detailed objections to counsel's fee request. On August 17, 2007, the district director awarded claimant's counsel a fee in the amount of \$95,000.

On appeal, employer contends that the district director erred in awarding claimant's counsel a fee without an adequate explanation or a discussion of employer's objections. Claimant responds, urging affirmance of the district director's fee award.

We agree with employer that the district director's fee award cannot be affirmed. Employer raised multiple, specific objections to the fee petition filed by claimant's counsel. Although specifically instructed on remand to address these objections, the district director did not address them in his award of an attorney's fee. *See Jensen v. Weeks Marine*, 33 BRBS 97 (1999). Moreover, the district director's summary fee award does not comport with law, as a sufficient explanation for a fee award must be provided. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990)(Lawrence, J., dissenting). Where a district director has not provided a sufficient explanation for the fee awarded, the Board is prevented from reviewing the award and will remand the case to the district director for an explanation. *Id.* at 288; *Speedy v. General Dynamics Corp.*, 15 BRBS 448 (1983). In this case, the district director stated that in consideration of the complexity of the case, the amount of time involved, the results achieved and "other factors," a fee of \$95,000 is reasonable and payable by employer. *See* 20 C.F.R. §702.132. In view of the district director's failure, however, to specifically address employer's objections, the award must be vacated and the case again remanded for reconsideration. *See Jensen*, 33 BRBS 97; *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984). On remand, the district director must adequately discuss employer's objections to the fee petition, specify any reductions in the fee requested, and provide an explanation therefor. *Devine*, 23 BRBS at 288.

Accordingly, the district director's Compensation Order Award of Attorney's Fees is vacated, and the case is remanded for reconsideration consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge