

BRB Nos. 98-0941
and 98-0941A

FREDDIE REID)	
)	
Claimant-Petitioner)	DATE ISSUED: <u>April 6, 1999</u>
Cross-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
)	
Self-Insured)	
Employer-Respondent)	
Cross-Petitioner)	DECISION and ORDER

Appeals of the Compensation Order - Award of Attorney's Fees of
Chris John Gleasman, District Director, United States Department of
Labor.

Scott O. Nelson (Maples & Lomax, P.A.), Pascagoula, Mississippi, for
claimant.

Traci M. Castille (Franke, Rainey & Salloum, PLLC), Gulfport,
Mississippi, for self-insured employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and
NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals and employer cross-appeals the Compensation Order -
Award of Attorney's Fees (No. 7-138932) of District Director Chris John Gleasman
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).

On April 15, 1996, claimant filed a claim for benefits under the Act based upon his alleged work-related hearing impairment. On May 6, 1996, employer accepted liability for the claim. Thereafter, claimant's counsel submitted a petition for an attorney's fee for work performed before the district director, requesting a fee totaling \$689, representing 4.5 hours at \$150 per hour, plus expenses of \$14. Employer filed objections to this fee request. In awarding counsel a fee, the district director awarded an hourly rate of \$150, but reduced the number of hours requested by claimant's attorney, allowing only .875 of an hour for a total of \$145.25, including expenses, payable by employer.

Claimant appeals, contending that the administrative law judge erred in not awarding a fee for work performed prior to April 18, 1996, when employer received notice of the claim, and further erred in not awarding a fee for work performed after May 17, 1996, the date employer paid benefits. BRB No. 98-0941. Employer responds, contending that the district director's denial of fees after May 17, 1996, should be affirmed. Employer also appeals, contending that the hourly rate awarded by the district director is excessive. BRB No. 98-0941A. Claimant responds, urging affirmance on this issue.

Claimant's counsel asserts that, contrary to the district director's determination, all entries on the fee petition after May 17, 1996, totaling one hour, reflect work that was required in order to ensure that this claim was properly wrapped up, and as such these fees are compensable as reasonable and necessary "wind up" services associated with the claim. Although employer may be held liable for reasonable "wind-up" services after employer has agreed to pay benefits, see *Everett v. Ingalls Shipbuilding, Inc.*, 32 BRBS 279 (1998), *aff'd on recon. en banc*, BRBS , BRB No. 98-492 (March 26, 1999), we note that employer accepted liability for benefits on May 6, 1996. Accordingly, as employer did not "decline to pay" benefits on or before 30 days after receiving notice of the claim, employer cannot be held liable for claimant's attorney's fee pursuant to Section 28(a) of the Act, 33 U.S.C. §928(a). Accordingly, we decline to remand this case for consideration of employer's liability for wind-up services.¹

¹As employer does not appeal the district director's finding that it is liable for an attorney's fee for .875 hours and expenses, we affirm this finding.

However, the assertion of claimant's counsel that claimant should be responsible for any fees incurred prior to April 18, 1996, may have merit. Where, as here, employer is not liable for an attorney's fee pursuant to either Section 28(a) or (b), claimant may be liable for an attorney's fee pursuant to Section 28(c), 33 U.S.C. §928(c). See, e.g., *Portland Stevedoring Co. v. Director, OWCP*, 552 F.2d 293, 6 BRBS 61 (9th Cir. 1977); *Ryan v. Newport New Shipbuilding & Dry Dock Co.*, 19 BRBS 208 (1987). Accordingly, we vacate the district director's denial of an attorney's fee for services provided prior to April 18, 1996, and we remand this case in order for the district director to evaluate claimant's liability for a fee under the criteria set forth in 20 C.F.R. §702.132(a), including determining whether such a fee is reasonable given the claimant's financial circumstances.²

Employer's sole contention in its appeal is with regard to the hourly rate awarded to claimant's counsel by the district director. Specifically, employer asserts that the lack of complexity of the instant case, the geographic region where the case arose, and the relative inexperience of claimant's counsel mandates a reduction in the fee to an hourly rate of \$100 for Attorney Boswell and \$90 for Attorney Nelson. We reject employer's contention. In this case, the district director specifically stated that in awarding the fee he took into consideration the complexity of the issues, the quality of the representation, the hourly rate awarded to other attorneys of similar experience, and the benefit to the employee. See 20 C.F.R. §702.132. Accordingly, employer has not satisfied its burden of showing that the district director abused his discretion in awarding a fee at an hourly rate of \$150. See *Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134 (CRT) (10th Cir. 1997); *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Accordingly, the district director's denial of certain attorney's fees is vacated, and the case is remanded to the district director for further consideration consistent with this opinion. In all other respects, the district director's fee award is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

²We note that, on remand, claimant may also be found liable for the attorney's fees incurred after May 17, 1996. 28 U.S.C. §928(c).

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge