



BRB No. 14-0432

JEFFREY R. SHIPPY)	
(Deceased))	
)	
Claimant-Respondent)	
)	
v.)	
)	
PACIFIC ARCHITECTS & ENGINEERS)	DATE ISSUED: <u>Aug. 5, 2015</u>
)	
and)	
)	
ACE AMERICAN INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Order Awarding Attorney Fees Under 33 USC 928 of Marco A. Adame II, District Director, Office of Workers' Compensation Programs, United States Department of Labor.

Richard Mark Baker, Long Beach, California, for claimant.

Alan G. Brackett and Beth S. Bernstein (Mouledoux, Bland, LeGrand & Brackett, LLC), New Orleans, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Order Awarding Attorney Fees Under 33 USC 928 (Case No. 02-187626) of District Director Marco A. Adame II 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 district director's fee award will not be set aside unless it is shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

On May 1, 2009, claimant reported to employer that he had sustained a work-related right hip and rib injury. On June 2, 2009, the district director sent employer notice that claimant had filed a claim. On June 15, 2009, employer commenced voluntarily payment of temporary total disability benefits, which it converted to temporary partial disability benefits on November 28, 2009. In a Memorandum of Informal Conference dated August 20, 2010, the district director recommended that employer pay claimant permanent partial disability benefits at the rate at which it was voluntarily paying temporary partial disability benefits. Employer continued to pay benefits at this rate until October 6, 2010, when employer lowered its permanent partial disability payments to reflect claimant's receipt of post-injury wages. The case was subsequently referred to the Office of Administrative Law Judges. On February 7, 2011, claimant died from non work-related causes. On May 27, 2011, employer paid claimant's widow the sums sought by claimant's counsel as owed to claimant. The case was remanded to the district director.

On November 14, 2013, claimant's counsel filed with the district director a petition requesting an attorney's fee of \$20,500, payable by employer, for services performed on behalf of claimant. Employer filed objections to this fee petition averring, inter alia, that counsel is not entitled to an employer-paid fee. The district director issued a fee order on September 4, 2014, awarding claimant's counsel a fee of \$19,890, payable by employer pursuant to Section 28(a) of the Act, 33 U.S.C. §928(a).

Employer appeals the district director's fee award, arguing that, on the facts of this case, it cannot be held liable for claimant's counsel's fee pursuant to Section 28(a) of the Act. On January 12, 2015, claimant's counsel filed a letter with the Board stating that he does not oppose employer's appeal and that, moreover, he has agreed to withdraw with prejudice his November 14, 2013 Statement of Services and Fee Petition. In light of claimant's acceptance of the position advocated by employer on appeal, we need not address employer's specific contentions. As the parties are in agreement that the district director's fee order holding employer liable for claimant's counsel attorney's fee is in error and as claimant's counsel has withdrawn his fee petition, we reverse the district director's fee award.

Accordingly, the district director's Order Awarding Attorney Fees Under 33 USC 928 is reversed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge