



BRB No. 16-0022

RANDOLPH BESSARD

Claimant-Respondent

TONY B. JOBE

(Former attorney for claimant)

Petitioner

v.

C & D PRODUCTION SPECIALIST  
COMPANY, INCORPORATED

and

LOUISIANA WORKERS'  
COMPENSATION CORPORATION

Employer/Carrier

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS, UNITED  
STATES DEPARTMENT OF LABOR

Party-in-Interest

DATE ISSUED: July 5, 2016

DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees on Remand  
of David A. Duhon, District Director, United States Department of Labor.

Tony B. Jobe (Law Offices of Tony B. Jobe), Madisonville, Louisiana.

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

PER CURIAM:

Claimant's former counsel, Tony B. Jobe, appeals the Compensation Order Award

of Attorney's Fees on Remand (OWCP No. 07-146789) of District Director David A. Duhon 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 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 is before the Board for the second time.

Claimant, after sustaining a work-related injury on November 21, 1997, retained Mr. Jobe (counsel) as his attorney, who represented him from June 1998 through April 14, 2014. In a Decision and Order dated March 21, 2013, the administrative law judge, based on the stipulations of the parties, awarded claimant various periods of temporary total and partial disability benefits from December 23, 1997 through July 21, 2001, permanent total disability benefits from August 27, 2006 and continuing, and medical benefits arising from claimant's work-related back injury. Counsel subsequently filed a fee petition with the district director, who, on July 25, 2013, awarded counsel \$49,040 in attorney's fees, payable by employer pursuant to Section 28(b) of the Act, 33 U.S.C. §928(b).<sup>1</sup>

Claimant terminated his relationship with counsel effective April 14, 2014, and thereafter represented himself. By letter dated May 5, 2014, counsel for carrier submitted to the district director an application for a Section 8(i) settlement, 33 U.S.C. §908(i), whereby employer agreed to pay claimant a lump sum of \$625,000 to discharge its liability under the Act. The agreement also recognized that counsel would file a fee petition with the district director for services he performed on claimant's behalf in 2013 and 2014, but it stated that employer would not be responsible for those fees. The settlement was approved by the district director on May 8, 2014.

Counsel, thereafter, sought before the district director, under Section 28(c) of the Act, 33 U.S.C. §928(c), an attorney's fee totaling \$19,238.10.<sup>2</sup> The district director

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<sup>1</sup>The administrative law judge also awarded counsel an attorney's fee for work performed at the Office of Administrative Law Judges (OALJ) level in the amount of \$16,132.50, payable by employer.

<sup>2</sup>Specifically, counsel sought \$1,378.10 for attorney services performed in 2014 and paralegal services performed between June 26, 2013 and April 12, 2014, at the district director level, \$11,940 for "uncompensated" work performed during periods between August 26, 2004 and August 23, 2012, when the case was before the administrative law judge, and a combined \$5,920 for "uncompensated" pre-controversion services performed between November 5, 2003 and August 24, 2004, as well as for work performed between November 1, 2003 through August 21, 2012, related to travel

awarded counsel an attorney's fee totaling \$1,365, payable by claimant as a lien against his compensation, 33 U.S.C. §928(c), for work performed before the district director from June 26, 2013 to May 19, 2014. Counsel appealed to the Board the district director's denial of an attorney's fee for work performed at the Office of Administrative Law Judges (OALJ) level and for those fees for which employer was not held liable in the July 25, 2013 Order, i.e., alleged pre-controversion fees and for time spent on Privacy Act and travel reimbursement issues, contending that the district director's prior order did not address claimant's potential liability for a fee for these services. The Board affirmed the district director's award of an attorney's fee of \$1,365, payable under Section 28(c) as a lien against claimant's compensation, as well as his denial of an attorney's fee for work performed by counsel at the OALJ level and of \$13.10 in costs which counsel sought. *Bessard v. C & D Prod. Specialist Co., Inc.*, BRB No. 15-0071 (Aug. 25, 2015) (unpub.), *aff'd on recon. en banc* (Dec. 15, 2015). The Board, however, remanded the case for the district director to address claimant's liability for an attorney's fee for any necessary work performed at that level for which counsel had not already been awarded an attorney's fee under Section 28(b). *Id.*

On remand, the district director denied the additional attorney's fees sought by counsel for the period between November 1, 2003 and August 24, 2004 because counsel had already received a fee for this work, and for time spent by counsel in "attempting to remove medical records from the administrative file." Compensation Order on Remand dated September 16, 2015 (Comp. Order) at 1-2. The district director, however, awarded counsel an additional fee of \$585, representing 1.4 hours of attorney time at an hourly rate of \$300 and 2.2 hours of paralegal time at an hourly rate of \$75 for work performed on obtaining travel reimbursement costs, payable by claimant as a lien against compensation pursuant to Section 28(c).<sup>3</sup>

On appeal, counsel challenges the district director's denial of an attorney's fee for work performed between November 1, 2003 and August 24, 2004,<sup>4</sup> as well as for work

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reimbursement and the removal of medical records from the administrative file under the Privacy Act.

<sup>3</sup>In reaching this conclusion, the district director made the requisite determination that claimant has the financial capability to pay counsel's fee. 20 C.F.R. §702.132(a).

<sup>4</sup>Counsel avers that the doctrine of equitable estoppel now prevents the district director from denying attorneys' fees during the 2003-2004 period given that the Director stated in his response brief in the prior appeal that it was error for the district director to have done so. Counsel's contention lacks merit. The Director, in the prior appeal, took no position regarding counsel's actual entitlement to an award of attorney's fees for this time. Rather, the Director merely contended that, on remand, the district director should

retrieving “erroneous and libelous medical records contained in claimant’s Department of Labor file.” Counsel also contends the district director erroneously awarded a reduced fee for services related to the successful claim for reimbursement of claimant’s medical transportation expenses.

We reject claimant’s contention that the district director erred in denying a fee for services performed in 2003-2004. A comparison of counsel’s fee petitions with the district director’s July 25, 2013 Order supports the district director’s conclusion on remand that counsel has already been awarded a fee payable by employer pursuant to Section 28(b) for work performed from November 1, 2003 through August 24, 2004. Counsel’s fee petitions totaled 178.6 hours for this period. Subtracting 38.3 hours for work performed before the OALJ and the 8.6 hours spent on the privacy and travel reimbursement issues, it appears that counsel expended 131.5 hours of attorney time before the district director through July 2013. As counsel was awarded a fee for 134.7 hours of attorney work in the district director’s July 25, 2013 Order, we affirm the district director’s denial of any additional attorney’s fees for this period.

We also reject counsel’s contention that the district director erred in denying a fee for work performed in attempting to have Dr. Cuadra’s opinion stricken from the record. The district director found the time spent by counsel on this task was “both unreasonable and unnecessary.” Comp. Order at 2. Counsel concedes that his work toward this goal was neither successful nor directly relevant to claimant’s obtaining benefits.<sup>5</sup> Counsel’s Br. at 26. Indeed, the district director found counsel’s “actions in this respect had no relationship to the Claimant’s award of benefits.” Comp. Order at 1-2. As counsel has not established an abuse of the district director’s discretion in finding these services unnecessary to the claim, we affirm the district director’s denial of an attorney’s fee for this issue. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5<sup>th</sup> Cir. 1999).

Lastly, counsel contends the district director erred in failing to award an attorney’s fee for all services performed on the travel reimbursement issues, as the district director found the work “was both necessary and reasonable to the prosecution of the claim.”

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address whether counsel may be entitled to an additional fee for the time in question under Section 28(c).

<sup>5</sup>Specifically, counsel maintained that although claimant may not have been successful in having Dr. Cuadra’s records stricken from the record, and no decision was made by the district director with regard to the weight to be accorded Dr. Cuadra’s opinion, without counsel’s efforts to discredit Dr. Cuadra, claimant’s “benefits in future proceedings certainly would have been reduced or destroyed.” Counsel’s Br. at 26.

Comp. Order at 2. We reject this contention. Counsel sought 2.1 hours of attorney time, 3.6 hours of paralegal time, and .2 hours of law clerk time on this issue before the district director. *See* Counsel’s Br. at 28. The district director granted a fee for 1.4 hours of attorney time and 2.2 hours of paralegal time. The district director found that the travel reimbursement issue “was brought up a total of two times before” him. Comp. Order at 2. Specifically, the district director stated that the issue was first mentioned in counsel’s August 19, 2004 cover letter enclosing his form LS-18 but that it “was not listed as an issue” on the LS-18, nor thereafter mentioned once the case was remanded on January 17, 2006, where “the ‘sole’ issue of approval of lumbar disc surgery was resolved.” *Id.* The district director stated that travel reimbursement was again raised at an informal conference held on July 31, 2012, but he added that “neither the parties nor the district director could determine if there was any additional reimbursement due.” *Id.* Based on “these facts,” the district director awarded a fee of \$585 for work performed by counsel on the travel reimbursement issue, representing 1.4 hours of attorney time and 2.2 hours of paralegal work. Counsel has not established that the district director abused his discretion in awarding a reduced attorney’s fee commensurate with the limited scope of the issue. *See, e.g., Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 41 BRBS 53(CRT) (9<sup>th</sup> Cir. 2007) (noting fact-finder’s “superior understanding” of the underlying litigation); *Conoco, Inc.*, 194 F.3d 684, 33 BRBS 187(CRT). Therefore, we affirm the additional fee awarded by the district director on remand.

Accordingly, the district director’s Compensation Order Award of Attorney’s Fees on Remand is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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RYAN GILLIGAN  
Administrative Appeals Judge

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JONATHAN ROLFE  
Administrative Appeals Judge

