



BRB No. 16-0171
Case No. 2015-LHC-01394
OWCP No. 01-301185

DAVID P. HOUGHTON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
BOSTON SHIP REPAIR, INCORPORATED)	DATE ISSUED: <u>May 27, 2016</u>
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Petitioner)	ORDER

Employer appeals the Decision and Order Awarding Attorney Fees (2015-LHC-01394) of Administrative Law Judge Colleen A. Geraghty 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). By motion dated March 31, 2016, the parties jointly move the Board to vacate the administrative law judge’s Decision and Order Awarding Attorney Fees on the basis that the administrative law judge’s decision was void *ab initio*.

As acknowledged by the administrative law judge and the parties, there are no facts in dispute in this matter. *See* Administrative Law Judge Decision and Order Awarding Attorney Fees (Administrative Law Judge Decision) at 2-4; JX 1; Agreed Motion to Vacate Administrative Law Judge Decision at 3 n. 3. On December 15, 2014, claimant’s counsel filed a fee petition with the district director, requesting a fee of \$4,300 for work performed before the district director’s office. JX 1 at 62-66. By letter dated December 22, 2014, employer objected to the fee request, contesting its liability for a fee under Section 28(a) or Section 28(b) of the Act, 33 U.S.C. §928(a), (b). *Id.* at 60. On January 22, 2015, claimant filed an Objection to and Motion to Strike Employer/Insurer’s Denial of Attorney’s Fee Petition. *Id.* at 44-59. In a reply dated February 6, 2015, employer reiterated its position that it is not liable for claimant’s

attorney's fee. *Id.* at 37. On March 27, 2015, the district director issued a Compensation Order awarding claimant's counsel a fee of \$4,300 to be paid by employer pursuant to Section 28(a). *Id.* at 15-17. By letter dated April 7, 2015, employer requested reconsideration of the district director's Compensation Order, asserting that this matter is not governed by Section 28(a) and that the requirements for fee liability under Section 28(b) were not met. *Id.* at 13-14. On April 14, 2015, claimant moved to strike employer's April 7, 2015 correspondence. *Id.* at 10-12.

Claimant filed a Pre-Hearing Statement (LS-18) on June 4, 2015, requesting a formal hearing to resolve the issue of his counsel's entitlement to an attorney's fee payable by employer. JX 1 at 8-9. The case was referred to the Office of Administrative Law Judges (OALJ) on June 11, 2015, *id.* at 3-5, and employer filed its LS-18 form on June 18, 2015. *Id.* at 2. Pursuant to the parties' agreement that the only dispute involved a legal issue that could be resolved based on the parties' stipulations and briefs, the administrative law judge issued an Order Canceling Hearing on July 24, 2015. On August 27, 2015, the parties submitted Joint Stipulations and Joint Exhibit 1, which were admitted into the record. *See* Administrative Law Judge Decision at 2. Thereafter, claimant and employer respectively filed briefs and reply briefs regarding the legal issue of employer's liability for claimant's attorney's fees for services performed before the district director.

In a Decision and Order Awarding Attorney Fees issued on December 8, 2015, the administrative law judge, having noted that there are no disputed factual issues, determined that the sole legal question involves claimant's entitlement to attorney's fees under Section 28(a). Administrative Law Judge Decision at 2, 4. The administrative law judge concluded that claimant is entitled to attorney's fees under Section 28(a) and, accordingly, she affirmed the district director's Compensation Order and ordered employer to pay claimant's counsel a fee of \$4,300 for services performed before the district director. *Id.* at 4-7.

For the reasons that follow, we grant the parties' joint motion to vacate the administrative law judge's decision. A district director's award of attorney's fees may be appealable to the OALJ if the appeal is based on disputed facts that require an evidentiary hearing. *Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 1097, 33 BRBS 209, 214(CRT) (9th Cir. 2000), *cert. denied*, 523 U.S. 1133 (2000); *Glenn v. Tampa Ship Repair & Dry Dock*, 18 BRBS 205 (1986). However, the proper route for appeal of the district director's determination of purely legal issues is directly to the Board. *Cabral*, 201 F.3d at 1094-1097, 33 BRBS at 211-214(CRT); *Glenn*, 18 BRBS at 207. The issue of an employer's liability for claimant's attorney's fees depends on a legal interpretation of Section 28, and, thus, is a legal issue which, in the absence of contested facts, is appealable directly from the district director to the Board. *Id.* In this case, where the administrative law judge explicitly acknowledged that no disputed issues of fact were presented and that the matter involves a strictly legal question, *see* Administrative Law

Judge Decision at 2, 4, the parties' dispute regarding the district director's determination that employer is liable for claimant's attorney's fees was not within the administrative law judge's adjudicatory power. *Id.* Rather, the district director's Compensation Order should have been directly appealed from the district director to the Board. *Id.* Thus, as the administrative law judge lacked jurisdiction over this matter, we grant the parties' joint motion to vacate her decision.¹

Accordingly, the administrative law judge's Decision and Order Awarding Attorney Fees is vacated in its entirety.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

¹ In light of our decision to grant the parties' motion to vacate the administrative law judge's decision, the parties' joint motion to stay the briefing schedule is moot.