

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 24-0173

MICHEAL MAZUNO)
)
 Claimant-Petitioner)
)
 v.)
)
 TRIPLE CANOPY)
)
 and)
)
 STARR INDEMNITY & LIABILITY)
 COMPANY, c/o GALLAGHER BASSETT)
 SERVICES)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 02/24/2026

DECISION and ORDER

Appeal of the Order Denial of Attorney Fee Application of Todd Bruininks, District Director, United States Department of Labor.

Tara K. Coughlin and J. Robert Spencer (Law Offices of Tara K. Coughlin), Harrison Township, Michigan, for Claimant.

Kimberly W. Rahn and Sarah M. Suddarth (Schouest, Bamdas, Soshea, BenMaier & Eastham, P.L.L.C.), Chicago, Illinois, for Employer and Carrier.

Victoria Yee (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, JONES and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant's attorney, Tara K. Coughlin (Counsel or Attorney Coughlin), appeals the Order Denial of Attorney Fee Application (OWCP No. LS-02326848) of District Director Todd Bruininks (district director) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), as extended by the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA). 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, based on an abuse of discretion, or not in accordance with law.¹ *See Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 955 (9th Cir. 2007); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272, 273 (1980).

Claimant was injured in the course of his employment with Employer in Afghanistan on January 25, 2020. On June 19, 2020, Employer submitted a Notice of Payments (Form LS-208), instituting the payment of temporary total disability (TTD) benefits from January 26, 2020, through the present and continuing. On September 24, 2020, Claimant signed a Notice of Retainer identifying Tara Coughlin, Esquire as his attorney. On December 4, 2020, Employer submitted a Notice of Controversion of Right to Compensation (Form LS-207) indicating it had terminated benefits following Claimant's failure to attend three scheduled medical appointments.²

On January 15, 2021, Attorney Coughlin filed a claim on Claimant's behalf for compensation and medical benefits under the Act. *See Employee's Claim for Compensation* (Form LS-203). Shortly thereafter, on February 11, 2021, she requested

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who issued the Order is located in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

² According to the Form LS-207, Claimant failed to attend each appointment Employer scheduled on October 22, 2020, October 29, 2020, and November 30, 2020, all with the same physician.

and received a copy of Claimant's administrative file from the Department of Labor. On April 27, 2021, Carrier sent Attorney Coughlin an email requesting updated medical records. *See* Emp.'s Fee Resp., Ex. 1.

On August 20, 2022, Claimant sent a letter to Attorney Coughlin terminating her services as his counsel. *See* Emp.'s Fee Resp., Ex. 2. In the letter, Claimant indicated she and her firm had failed to respond to his emails or provide him with any updates regarding his claim since February 2022. *Id.* Claimant retained new counsel in September 2022.³ On December 1, 2022, Attorney Coughlin sent a letter to the district director withdrawing as Claimant's attorney and asserting a lien for an attorney fee and costs. In August 2023, Claimant, represented by his new attorney, entered into a Section 8(i) settlement agreement with Employer, 33 U.S.C. §908(i), resolving all issues except for Attorney Coughlin's asserted lien.

On November 16, 2023, Attorney Coughlin filed a Fee Petition (Fee Pet.) with the district director seeking a total of \$13,187.18, representing a fee of \$12,768⁴ and \$419.18 in costs pursuant to Section 28(a), 33 U.S.C. §928(a). Fee Pet. at 4-7. On March 13, 2024, the district director issued an Order denying the fee petition in its entirety. (Fee Order). He concluded the requirements of Section 28(a) were not met as Attorney Coughlin was unsuccessful in obtaining benefits on behalf of Claimant after Employer controverted the claim. Fee Order at 2 (unpaginated).

Attorney Coughlin appeals, challenging the district director's denial of an attorney's fee and costs for her under Section 28(a) of the Act. Employer responds, urging affirmance of the district director's denial, and Attorney Coughlin filed a reply reiterating her contentions. The Director, Office of Workers' Compensation Programs (OWCP) (the Director), also responds, urging the Board to affirm the district director's denial of Attorney Coughlin's attorney fee request.

Under Section 28(a) of the Act, 33 U.S.C. §928(a), the employer is responsible for a reasonable attorney's fee in addition to the compensation award when it "declines to pay any compensation on or before the thirtieth day after receiving written notice of a claim for compensation having been filed from the deputy commissioner" and "thereafter" the

³ Claimant hired Attorney Samuel S. Frankel, Jr., of Barnett, Lerner, Karsen, Frankel & Castro, P.A., of Fort Lauderdale, Florida.

⁴ The fee request was broken down as follows: \$7,728.00 for 16.1 hours of billed time at a rate of \$480 per hour for Attorney Coughlin and \$5,040 for 16.8 hours of billed time at a rate of \$300 per hour for Attorney Joseph Robert Spencer (Attorney Spencer). *See* Itemized List of Time and Costs Billed.

claimant utilizes the services of an attorney in the successful prosecution of his claim. *Am. Stevedores, Inc. v. Salzano*, 538 F.2d 933, 937(2d Cir. 1976); *see* 20 C.F.R. §702.134(a). For there to be a “successful prosecution,” the claimant must obtain “some actual relief that materially alters the relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the claimant.” *Richardson v. Cont’l Grain Co.*, 336 F.3d 1103, 1106 (9th Cir. 2003); *Clophus v. Amoco Prod. Co.*, 21 BRBS 261, 265 (1988); *Wilhelm v. Seattle Stevedore Co.*, 15 BRBS 432, 435 (1983); *see also Andrepont v. Murphy Expl. & Prod. Co.*, 566 F.3d 415, 418 (5th Cir. 2009) (successful prosecution of the claim requires a claimant to establish entitlement to some form of relief for the claimant’s counsel to receive any attorney’s fee).

The district director found Attorney Coughlin did not obtain any benefit for Claimant following Employer’s controversion of the claim, i.e., there was no successful prosecution within the meaning of Section 28(a). Fee Order at 2 (unpaginated). Attorney Coughlin argues Claimant’s settlement was a “direct result” of her firm’s work, which included filing the claim and flying to Uganda to meet with Claimant in person and obtain his medical records.⁵ Counsel’s Pet. for Review at 3; Counsel’s Reply Br. at 3-4. However, the district director found Attorney Coughlin filed the claim only after Employer had terminated benefits, which it did due to medical noncompliance that occurred while she was representing Claimant. Fee Order at 2 (unpaginated). Furthermore, the district director noted that, despite traveling to Uganda purportedly to obtain Claimant’s medical records, Attorney Coughlin failed to submit any medical records to the OWCP or provide them to Carrier despite its request in April 2021.⁶ *Id.* In fact, the district director found

⁵ The Fee Petition’s Itemized List of Time and Costs Billed included time and costs incurred for Attorney Spencer’s travel to and from Uganda in October and November 2020. Fee Pet. at 2, 4, 6-7; Itemized List of Time and Costs Billed at 2-3.

⁶ The only party with whom Attorney Coughlin appears to have shared Claimant’s medical records obtained in Uganda is Claimant’s new counsel upon Attorney Coughlin’s withdrawal. Counsel’s Pet. for Review at 2; Counsel’s Reply Br. at 3. Although it is possible these records assisted Claimant’s new counsel in achieving a settlement, the district director did not abuse his discretion in finding Attorney Coughlin’s failure to share these records with Employer’s Carrier while she represented Claimant, despite Carrier’s requests for them, prevented application of Section 28(a) because Claimant did not obtain any form of relief through *her efforts* during the two years she represented him. 33 U.S.C. §928(a); *Andrepond*, 566 F.3d at 418; *Richardson*, 336 F.3d at 1106; *Clophus*, 21 BRBS at 265; *Wilhelm*, 15 BRBS at 435. Counsel bears the burden of proving she is entitled to an attorney’s fee, *Richardson*, 336 F.3d at 1107, and as the Director points out, she did not

“no evidence of any attorney activity in the compensation file” beyond Attorney Coughlin’s request for a copy of the administrative file and her filing of the notice of retainer and the Form LS-203.⁷ Fee Order at 2 (unpaginated). Based on the evidence of record, Attorney Coughlin has failed to show how the district director’s denial of an employer-paid fee under Section 28(a) based on lack of successful prosecution is arbitrary, capricious, or an abuse of discretion. *Ferguson v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 17, 17 (2002); *see also Topping v. Newport News Shipbuilding & Dry Dock Co.*, 16 BRBS 40, 44 (1983). We therefore affirm his finding that Section 28(a) does not apply and that Attorney Coughlin is not entitled to an employer-paid fee.⁸ *Tahara*, 511 F.3d at 956; *Muscella*, 12 BRBS 274.

establish how her work prior to Claimant’s retention of new counsel contributed to the settlement. Director’s Resp. at 3.

⁷ We reject Attorney Coughlin’s argument that the district director abused his discretion by disregarding her firm’s sworn affidavits and itemized time entries showing communications with Claimant beyond February 2022 in favor of a letter from Claimant denying any contact with her since February 2022. Counsel’s Pet. for Review at 4; Counsel’s Reply Br. at 4. Not only has Attorney Coughlin failed to demonstrate how this finding constituted an abuse of discretion, but also this is the type of discretionary finding that is best left to the factfinder who is in the best position to make the determination given his superior understanding of the underlying litigation. *Tahara*, 511 F.3d at 956; *see also Fox v. Vice*, 563 U.S. 826, 838 (2011).

⁸ Attorney Coughlin alternatively asserts the district director erred in his application of 20 C.F.R. §702.132 of the regulations, which states, in relevant part, “[a]ny fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded” 20 C.F.R. §702.132(a); Counsel’s Pet. for Review at 5; Counsel’s Reply Br. at 6-8. The district director denied Attorney Coughlin’s fee request “[p]ursuant to Section 702.132 of the regulations, considering the time spent, lack of benefit gained and lack of complexity of issues.” Fee Order at 3 (unpaginated). Attorney Coughlin argues this statement constitutes an abuse of discretion, as the time spent in traveling to Uganda was considerable, the arrangements necessary for such travel during a global pandemic were sufficiently complex, and Claimant unquestionably gained a benefit through the settlement. Counsel’s Pet. for Review PR at 5-6; Counsel’s Reply Br. at 6-8. These arguments are not persuasive as Attorney Coughlin still fails to demonstrate she secured any relief for Claimant.

Accordingly, we affirm the District Director's Order Denial of Attorney Fee Application.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

Moreover, application of the requirements set forth at Section 702.132(a) is premised on "any fee *approved*." 20 C.F.R. §702.132(a) (emphasis added). Having affirmed the district director's denial of entitlement to any fee pursuant to Section 28(a), there is no approved fee. Therefore, Section 702.132(a)'s requirements do not apply.