



BRB No. 21-0364
OWCP No. 14-314059

LENORA BRYANT)	
)	
Claimant-Respondent)	
)	
v.)	
)	
KINDER MORGAN)	
)	DATE ISSUED: 06/25/2021
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
c/o BROADSPIRE)	
)	
Employer/Carrier-)	ORDER on
Petitioners)	MOTION to DISMISS

Employer appeals Claims Examiner Kristen Dietz’s March 12, 2021 letter (OWCP No. 14-314059) stating Employer is liable for Claimant’s counsel’s attorney’s fee under 33 U.S.C. §928(a). Claimant has filed a motion to dismiss Employer’s appeal. 20 C.F.R. §802.401(b). Employer responds, urging the Benefits Review Board to deny Claimant’s motion.

In her March 12, 2021 letter, the claims examiner stated, “[b]ased on [Claimant’s counsel’s] briefing regarding her entitlement to fees, we have determined she is entitled to fees under Section 28(a) of the Act.” The claims examiner, however, also provided Employer thirty days to file objections to counsel’s fee petition, after which, she stated, “OWCP will issue recommendations and a fee order.”¹

¹ The claims examiner subsequently issued a letter dated April 16, 2021, granting Employer’s request to stay any further proceedings until a “determination is made by the [Benefits Review Board].”

We agree with Claimant that we must dismiss Employer's appeal because the district director has not yet issued a final order that resolves Claimant's counsel's request for an attorney's fee. *See* 33 U.S.C. §919(e) (a "compensation order" is one that rejects the claim or makes an award); *see Maria v. Del Monte/Southern Stevedore*, 22 BRBS 132 (1989) (en banc); *Anweiler v. Avondale Shipyards, Inc.*, 21 BRBS 271 (1988); *see also* 20 C.F.R. §702.371. Section 802.201(a) of the Board's regulations provides "[a]ny party or party-in-interest adversely affected or aggrieved by a decision or order . . . may appeal a decision or order of an administrative law judge or [district director]. . . ." 20 C.F.R. §802.201(a) (emphasis added). The March 12, 2021 letter is not an appealable order for two reasons: 1) the claims examiner is not authorized to rule on an attorney's fee petition because the district director may not delegate discretionary functions, *Tupper v. Teledyne Movable Offshore*, 13 BRBS 614 (1981), and; 2) a ruling on an attorney's fee petition must be addressed in an order, not a letter, *Thornton v. Beltway Carpet Serv.*, 16 BRBS 29 (1983).

Therefore, we dismiss Employer's appeal. If the district director issues an order assessing an attorney's fee against Employer, Employer may appeal that order directly to the Board. *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) (the issue of an employer's liability for a 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); *Glenn v. Tampa Ship Repair & Dry Dock*, 18 BRBS 205 (1986).

Accordingly, we grant Claimant's motion to dismiss Employer's appeal of the claims examiner's letter.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge