

LOIS J. COHEN)
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 Claimant-Respondent)
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 v.)
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 PRAGMA CORPORATION) DATE ISSUED: 04/27/2006
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 and)
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 CIGNA INSURANCE COMPANY)
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 Employer/Carrier-)
 Petitioners) DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees of Richard V. Robilotti, District Director, United States Department of Labor.

John C. Lynch (Macleay, Lynch, Gregg & Lynch, P.C.), Washington, D.C., for claimant.

Kenneth M. Simon (Flicker, Garelick & Associates, LLP), New York, New York, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney's Fees (2002-LHC-0368) of District Director Richard V. Robilotti 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 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 the law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sought benefits under the Act for pulmonary fibrosis which she alleged resulted from her exposure to environmental pollutants while working as an attorney for

employer in Almaty, Kazakhstan, from November 1997 through May 1998. In her initial Decision and Order, the administrative law judge denied claimant's claim, finding that claimant's condition was not the result of her employment exposures. Claimant appealed this decision, but before the Board could address the appeal, claimant moved for modification pursuant to 33 U.S.C. §922, and the Board dismissed the appeal. *Cohen v. Pragma Corp.*, BRB No. 01-0739 (Sept. 25, 2001)(unpub.).

On modification, the administrative law judge awarded claimant both disability and medical benefits. Thereafter, the administrative law judge awarded claimant's counsel a fee in the amount of \$160,140, plus \$14,779.51 in costs. On appeal, the Board affirmed the administrative law judge's determination that claimant's pulmonary fibrosis was caused by her employment in Almaty, Kazakhstan, and her award of temporary total disability and medical benefits to claimant. The Board vacated the fee awarded to claimant's counsel by the administrative law judge, and remanded the case for further consideration of the fee petition. *Cohen v. Pragma Corp.*, BRB No. 03-0429 (Mar. 19, 2004)(unpub.).

Claimant's counsel also filed a fee petition for work performed before the district director. Specifically, claimant's counsel requested a fee in the amount of \$108,285, representing 533.6 hours at the hourly rate of \$200, for legal services performed between May 1999 to March 2003, and \$1,425, representing 28.5 hours at the hourly rate of \$50, for legal assistant services performed on behalf of claimant. Employer filed multiple objections to counsel's fee request. After noting counsel's application for a fee in the amount of \$108,285, the district director awarded claimant's counsel an "interim" fee of \$50,000.

On appeal, employer asserts that the district director erred by failing to address the objections which it raised and by arbitrarily reducing the fee requested by claimant's counsel without adequate explanation. Claimant responds, urging affirmance of the district director's fee award.

We agree with employer that the district director's fee award cannot be affirmed. Employer raised multiple, specific objections to the fee petition filed by claimant's counsel with the district director including, *inter alia*, the excessive nature of counsel's fee request, duplicative billing, and the degree of success obtained by counsel. These objections were neither set forth nor addressed by the district director in his award of a fee to claimant's counsel. See *Jensen v. Weeks Marine*, 33 BRBS 97 (1999). Moreover, the district director's summary fee award does not comport with law, as a sufficient explanation for a fee award must be provided. See *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990)(Lawrence, J., dissenting). Where a district director has not set forth a sufficient explanation for the fee awarded, the Board is prevented from reviewing the award and will remand the case to the district director for an explanation.

In the instant case, in awarding claimant's counsel an interim fee of \$50,000, the district director summarily concluded that "a fee at this junction is reasonable."¹ Given the cursory nature of the district director's fee award and his failure to address either the objections raised by employer or the rationale behind the fee awarded, the district director's fee award must be vacated and the case remanded for reconsideration. *See Jenson*, 33 BRBS 97; *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984). On remand, the district director must adequately discuss employer's objections to the fee petition, specify any reductions, and provide an explanation therefor. *Devine*, 23 BRBS at 288.

¹In the instant case, the district director characterized the \$50,000 fee he awarded claimant's counsel as an interim fee, apparently based upon counsel's representation that claimant has filed an appeal with the United States District Court for the District of Columbia. *See* Brief by Employer and Carrier in Support of Petition for Review at 4. Neither the Act nor the regulations provide, however, for the award of an interim fee; rather a fee may be awarded for all services rendered to date since fees do not become effective and thus enforceable until all appeals have been exhausted. *See Thompson v. Potashnick Constr. Co.*, 812 F.2d 574 (9th Cir. 1987); *Wells v. Int'l Great Lakes Shipping Co.*, 693 F.2d 663, 15 BRBS 47(CRT) (7th Cir. 1982); *Williams v. Halter Marine Serv., Inc.* 19 BRBS 248 (1987); *Bruce v. Atlantic Marine, Inc.*, 12 BRBS 65 (1980), *aff'd*, 661 F.2d 898, 14 BRBS 63 (5th Cir. 1981).

Accordingly, the district director's Compensation Order Award of Attorney's Fees is vacated, and the case is remanded reconsideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge