BRB No. 07-0458
OWCP No. 01-160951

MICHAEL HAYES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BATH IRON WORKS CORPORATION	)	DATE ISSUED: 04/17/2007
	)	
Self-Insured	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER

By notice dated January 23, 2007, claimant appeals the July 20, 2006, Order of District Director David Groeneveld awarding claimant's counsel an attorney's fee on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* This appeal is acknowledged and assigned the Board's docket number BRB No. 07-0458. All correspondence relating to this appeal should bear this number. 20 C.F.R. §802.210.

In his fee order filed on July 20, 2006, the district director awarded claimant's counsel an attorney's fee based on an hourly rate lower than that requested. In December 2006, claimant's counsel sought referral of the case to the Office of Administrative Law Judges on the issue of whether her customary billing rate is reasonable for the state of Maine. The district director refused to refer the claim, stating that the amount of a fee award is discretionary and that counsel had not raised any questions of fact requiring a hearing before an administrative law judge. Claimant's counsel disagreed, and subsequently filed an appeal of the district director's fee award.

We dismiss claimant's appeal as it is untimely as to the filing of the district director's fee award. Claimant's notice of appeal specifically states he is appealing the district director's fee order of July 20, 2006. This award, however, became final 30 days after July 20 when no appeal was filed within the time constraints of the Act. 33 U.S.C.

§921(a); *INA v. Gee*, 702 F.2d 411, 15 BRBS 107(CRT) (2d Cir. 1983); 20 C.F.R. §§702.350, 802.205, 802.208. Therefore, the appeal must be dismissed. 20 C.F.R. §802.205(c).

Moreover, the district director did not err in refusing to refer the claim to the Office of Administrative Law Judges for a hearing. In *Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir.), *cert. denied*, 531 U.S. 956 (2000), the United States Court of Appeals for the Ninth Circuit held that a party does not have an absolute right to a hearing, pursuant to Section 19(d) of the Act, 33 U.S.C. §919(d), before an administrative law judge on all contested issues. Relevant to the current case, the court held that "disputes as to the adequacy of an award of attorney's fees are within the sole discretion of the District Directors and therefore do not involve any matters that require an evidentiary inquiry." *Id.*, 201 F.3d at 1095, 33 BRBS at 212(CRT). The court continued,

> the adequacy of attorney's fees for work performed before the District Director generally involves either purely legal issues or facts that are uniquely known to the District Director. . . . Additionally, the regulations specifically provide that attorney's fees shall be awarded based on qualitative, subjective factors that are uniquely within the knowledge of the body before which the attorney appeared. [20 C.F.R. §702.132]. . . . While review of the District Director's award is certainly necessary, it is best effectuated through appeal to the Board and not the OALJ, whose task is to make findings of fact and not reasonableness determinations based on considerations about which it has no immediate knowledge.

Id., 201 F.3d at 1095-1096, 33 BRBS at 213(CRT). As the issue of an appropriate hourly rate is within the discretion of the district director, claimant is not entitled to a hearing on the issue of the appropriateness of the requested hourly rate. A timely appeal was required to challenge the district director's fee award.

Accordingly, we dismiss claimant's appeal of the district director's fee award, as it was untimely filed. 20 C.F.R. §802.205(c).

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge