

BRB No. 98-1055

YOSOKO CAUDLE)	
(Widow of BILLY CAUDLE))	
)	
Claimant-Respondent)	
)	
v.)	
)	
ALAMEDA NAVAL AIR STATION)	DATE ISSUED: <u>April 20, 1999</u>
OFFICERS' CLUB/DEPARTMENT OF)	
THE NAVY/MWR)	
)	
and)	
)	
CONTRACT CLAIMS SERVICES)	
)	
Employer/Servicing)	
Agent-Petitioner)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney Fees of Joyce L. Terry, District Director, United States Department of Labor.

Joseph C. Waxman (Law Offices of Joseph C. Waxman), San Francisco, California, for claimant.

Elisa A. Roberts and Mary E. Wilson (Savell & Williams, L.L.P.), Atlanta, Georgia, for employer/servicing agent.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney Fees (Case No. 13-93787) of District Director Joyce L. Terry 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 Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

See, e.g., *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On March 30, 1998, claimant's counsel sought an attorney's fee of \$7,680, representing 37 hours and 25 minutes of legal services performed at an hourly rate of \$185, and \$750 in expenses, for work performed before the district director in connection with obtaining compensation for claimant's work-related injury. In an Order of April 9, 1998, the district director stated that employer filed objections before the administrative law judge and overruled the objection therein which involved time before her.¹ The district director then awarded claimant's counsel the fee and expenses requested. Employer appeals the district director's award, contending that the district director did not consider the objections it filed to counsel's fee petition dated April 8, 1998,² and requesting that the district director's award be vacated. Claimant urges affirmance and requests that an additional attorney's fee in the amount of \$925, representing \$185 per hour, be ordered by the Board for work performed in responding to employer's appeal.

¹ Specifically, the district director stated that the item employer objected to was the time spent on a letter pertaining to Section 8(f) of the Act, 33 U.S.C. §908(f). In overruling the objection, the district director found that the fifteen minutes billed by claimant's counsel is reasonable to ensure counsel is fully apprised of all matters in litigation.

²On April 16, 1998, a claims examiner sent a letter to employer stating that he had first received employer's April 8, 1998 objections on that date. As employer's objections were similar to those made at the administrative law judge level and addressed both at that level and in the district director's order approving fees dated April 9, 1998, he stated that the April 9, 1998, Order stands.

Employer has attached to its brief a copy of its objections, dated April 8, 1998, which the certificate of filing and service indicates was mailed by overnight Federal Express to the district director. It is well-established that due process requires that a fee request be served on employer and that it be given a reasonable amount of time to respond to the request. See, e.g., *Todd Shipyards Corp. v. Director, OWCP*, 545 F.2d 1176, 5 BRBS 23 (9th Cir. 1976); *Codd v. Stevedoring Services of America*, 32 BRBS 143 (1998); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990)(Lawrence, J., dissenting on other grounds); 20 C.F.R. §702.132(a). Implicit in this requirement is that employer's objections to the fee request must be considered. Accordingly, as employer timely filed a response to the March 30, 1998, fee request which was not explicitly considered, we vacate the district director's award of an attorney's fee to claimant's counsel and remand the case for the district director to consider employer's specific objections to counsel's attorney's fee petition.³

Accordingly, the Compensation Order Award of Attorney Fees is vacated, and the case is remanded for reconsideration consistent with this opinion. Claimant's request for a fee for work performed before the Board is denied at this time.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting

³Inasmuch as the district director did not consider employer's objections below, we decline to address employer's substantive contentions.

Administrative Appeals Judge