CHRISTOPHER GRAHAM	)	BRB Nos. 02-0804 and
	)	02-0804A
Claimant-Respondent Cross-Petitioner	)	
	)	
v.	)	
	)	
LOGISTEC OF CONNECTICUT, INCORPORATED	)	DATE ISSUED: 08/07/2003
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
Employer/Carrier-Petitioners Cross-Respondents	)	
	)	
CHRISTOPHER GRAHAM	)	BRB No. 02-0866
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LOGISTEC OF CONNECTICUT, INCORPORATED	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeals of the Compensation Order Award of Attorney Fees of Marcia Finn, District Director, United States Department of Labor and the Supplemental Decision and Order Granting Attorney Fee of David W. Di Nardi, Administrative Law Judge, United States Department of Labor.

Gerard R. Rucci (Law Offices of Gerard R. Rucci), New London, Connecticut, for claimant.

Peter D. Quay (Murphy and Beane), New London, Connecticut, for employer/carrier.

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

PER CURIAM:

Employer appeals and claimant cross-appeals the Compensation Order Award of Attorney Fees (Case No. 01-150968) of District Director Marcia Finn and employer appeals the Supplemental Decision and Order Granting Attorney Fee (01-LHC-2717) of Administrative Law Judge David W. Di Nardi 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.* (the Act). The amount of an attorney's fee award is discretionary, and will not be set aside unless the challenging party shows it to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Muscella v. Sun Shipbuilding, Inc.*, 12 BRBS 272 (1980).

Claimant sustained a work-related amputation of his left index finger on October 3, 2000. Employer voluntarily paid claimant medical benefits and temporary total disability benefits without an award from October 4, 2000 through December 10, 2000. Claimant returned to work on December 11, 2000. Thereafter, a dispute developed concerning the extent of claimant's permanent impairment. Claimant's treating physician, Dr. Thomson, assigned claimant an impairment rating of 100 percent of the left index finger, which he converted to a 24 impairment of the left hand. Thus, claimant sought benefits for a 24 percent loss of the hand pursuant to Section 8(c)(3) of the Act, 33 U.S.C. §908(c)(3), which would result in an award for 58.56 weeks. On May 22, 2001, employer's expert, Dr. Wainwright, opined that claimant's rating was limited to a 100 percent impairment of the left index finger. Thus, employer sought to limit claimant's compensation to that provided in Section 8(c)(7) of the Act, 33 U.S.C. §908(c)(7), or an award for 46 weeks. On June 20, 2001, prior to the convening of an informal conference, employer commenced payment of benefits under the schedule at Section 8(c)(7).

The district director held an informal conference on June 27, 2001, after which the parties were unable to reach an agreement. The case was referred to the Office of Administrative Law Judges on July 16, 2001. Prior to the scheduled hearing on March 26, 2002, the parties agreed to compromise the claim for an additional 6.26 weeks of benefits. In a subsequent order the administrative law judge issued an award based on the parties' agreement and remanded the case to the district director.

Claimant's counsel subsequently filed fee petitions with both the district director and the administrative law judge. Employer sought clarification of the fee petitions, as claimant's counsel apparently also requested a fee for services performed in another of

claimant's cases that was pending simultaneously.[1] On July 19, 2002, claimant's counsel submitted revised fee petitions to the district director and administrative law judge. He requested a fee of $4,050 for 20.25 hours of attorney services at $200 per hour for work performed before the district director, and a fee of $2,513.25 for 10.75 hours of attorney services at $225 per hour, plus costs of $94.50, for work performed before the administrative law judge.

Employer's law firm wrote to the administrative law judge and the district director to request an extension in which to respond to the fee petitions, as the attorney who was handling the claims was on vacation until July 29, 2002. Nonetheless, on July 24, 2002, the district director issued an Order awarding claimant's counsel an attorney's fee totaling $3,237.50. The district director reduced the requested hourly rate of $200 to $175 and she noted that the time requested equaled only 20 hours. The district director also reduced by 1.5 hours the number of hours requested by claimant's attorney for "communications with the client," which the district director characterized as excessive. The district director thus awarded claimant an attorney's fee of $3,237.50, in view of the regulatory criteria at 20 C.F.R. §702.132.

The administrative law judge issued his fee award on August 9, 2002, stating that no objections had been received from employer, although employer had, in fact, faxed objections to the administrative law judge on August 5, 2002. He awarded claimant the full fee and costs requested, in light of the regulatory criteria at 20 C.F.R. §702.132.

On appeal of the district director's fee award, employer contends that the district director erred in awarding claimant's counsel an attorney's fee, without allowing employer time to respond to claimant's fee petition, as it had requested. Employer also argues that the district director erred in holding employer liable for an attorney's fee prior to the time the controversy arose between the parties concerning the extent of claimant's permanent partial disability, for services that were compensated in the carpal tunnel syndrome claim, and for "excessive" time entries. BRB No. 02-0804. On cross-appeal, claimant contends that the district director erred in reducing the hourly rate to $175 in view of employer's agreement to pay an hourly rate of $185 in the carpal tunnel syndrome claim. Claimant also argues that the district director erred in reducing the number of hours requested. BRB No. 02-0804A. In its appeal of the administrative law judge's attorney's fee award, employer argues that the administrative law judge erred in not considering its objections to the fee petition in determining the attorney's fee award. Employer also argues that there is a duplication of charges in the fee petitions in

[1]Claimant had also filed a claim for bilateral carpal tunnel syndrome; the stated date of injury for both claims was October 3, 2000. The parties apparently settled this claim after it was referred to the OALJ. In addition, the parties subsequently agreed on an attorney's fee at both the district director and administrative law judge levels. The fee for the work performed before the district director was $2,821.25, and the fee for work performed before the administrative law judge was $3,865.19.

claimant's two cases, as well as excessive charges. Finally, employer contends that the fee award is excessive given claimant's success in obtaining benefits for an additional 6.25 weeks. BRB No. 02-0866.

We first address claimant's contentions that the district director erred in reducing the requested hourly rate and in disallowing 1.5 hours of the six hours claimed for communicating with claimant. The district director did not err in reducing the hourly rate to $175, irrespective of employer's agreement to pay $185 per hour in claimant's carpal tunnel syndrome claim, as she rationally determined that only $175 per hour was warranted for a case of this type. The district director is not bound by hourly rates awarded in other cases, and the hourly rate awarded is reasonable and within the district director's discretion. *See generally Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995). Moreover, claimant has not established that the district director abused her discretion in finding that counsel's communications with claimant were excessive and in reducing the fee request accordingly. *See generally Welch v. Pennzoil, Inc.*, 23 BRBS 395 (1990). Therefore, claimant's contentions of error are rejected.

With regard to employer's appeals, we need not address employer's specific contentions of error, as we hold that the district director erred in awarding a fee before giving employer the opportunity to file objections and that the administrative law judge erred in awarding a fee without considering the objections employer filed. Due process requires that an employer be given a reasonable time to respond to a fee petition. *See Todd Shipyards Corp. v. Director, OWCP [Hilton]*, 545 F.2d 1176, 5 BRBS 23 (9th Cir. 1976); *Codd v. Stevedoring Services of America*, 32 BRBS 143 (1998). In this case, the district director issued her fee award five days after receiving claimant's revised fee petition, despite employer's request for an extension in which to file its objections. Since this action is violative of employer's due process rights, we must vacate the district director's fee award and remand the case. On remand, the district director must provide employer with a reasonable amount of time in which to file objections to claimant's counsel's fee petition, *see Harbour v. C&M Metal Works, Inc.*, 10 BRBS 732 (1978) (five days is insufficient), and must take the objections into account in determining the amount of a reasonable attorney's fee. 33 U.S.C. §928; 20 C.F.R. §702.132.

Similarly, we must vacate the administrative law judge's fee award as he did not address employer's objections, and in fact, mistakenly stated that employer did not file any objections. Employer has attached to its reply brief a copy of the objections it faxed to the administrative law judge on August 5, 2002, as well as a transaction report verifying that the fax was transmitted.[2] On remand, the administrative law judge should

[2] In its request for an extension in which to file an objection to the fee petition, employer requested that the extension be granted until August 2, 2002. As there is no indication that the administrative law judge acted on employer's extension request, the fax on August 5 must be considered to be timely.

address the amount of the attorney's fee to which claimant's attorney is entitled in view of employer's previously filed objections. 33 U.S.C. §928; 20 C.F.R. §702.132.

Accordingly, we hold that the district director did not err in reducing the hourly rate to $175 and in disallowing 1.5 hours of services. Nonetheless, the district director's Compensation Order Award of Attorney Fees is vacated, and the case is remanded to the district director for proceedings consistent with this opinion. The administrative law judge's Supplemental Decision and Order Granting Attorney Fee also is vacated, and the case is remanded to the administrative law judge for proceedings 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