

BRB No. 06-0700

W.F. )  
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 Claimant-Respondent )  
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 v. )  
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 LOGISTEC, USA, INCORPORATED ) DATE ISSUED: 02/27/2007  
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 and )  
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 SIGNAL MUTUAL INDEMNITY )  
 ASSOCIATION )  
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 Employer/Carrier )  
 Petitioners ) DECISION and ORDER

Appeal of the Compensation Order Awarding Attorney Fees of David Groeneveld, District Director, United States Department of Labor.

Christopher J. Field (Field, Womack & Kawczynski, LLC), South Amboy, New Jersey, for employer.

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

PER CURIAM:

Employer appeals the Compensation Order Awarding Attorney Fees (Case No. 01-0159152) of District Director David Groeneveld 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 shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant injured his left knee while working for employer on August 21, 2003, rendering him unable to perform his usual work beginning on October 29, 2003. As a

result, he filed a claim for benefits under the Act on October 31, 2003, and employer, by notice dated November 14, 2003, agreed to commence the payment of disability benefits. Claimant resumed his work activities on October 18, 2004, prompting employer to cease its payment of disability benefits.<sup>1</sup> Claimant thereafter sought permanent partial disability benefits and the parties subsequently agreed that claimant is entitled to a scheduled award of benefits pursuant to Section 8(c)(2), 33 U.S.C. §908(c)(2), based on a 23 percent permanent partial impairment of the left lower extremity.

Claimant's counsel then filed a fee petition with the district director, and the district director awarded him an attorney's fee of \$6,547.47 payable by employer.<sup>2</sup> On appeal, employer challenges the attorney's fee awarded by the district director. Claimant has not filed a response brief in this case. Employer argues that the district director's award of an attorney's fee is not in accordance with law as he failed to discuss the applicable statutory and regulatory provisions, and did not address its objections to the fee petition.

Section 28 of the Act provides the authority for awarding attorney's fees under the Act. Section 28(a) provides that an employer is liable for an attorney's fee if, within 30 days of its receipt of a claim from the district director's office, it declines to pay benefits. 33 U.S.C. §928(a); *Richardson v. Continental Grain Co.*, 336 F.3d 1103, 37 BRBS 80(CRT) (9<sup>th</sup> Cir. 2003); *Clark v. Chugach Alaska Corp.*, 38 BRBS 67 (2004); *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990). Section 28(b), in general, allows an employer-paid attorney's fee if an employer pays or tenders compensation and thereafter a controversy develops over additional compensation owed, and a claimant successfully obtains additional compensation after following the procedures set forth in the Act. 33 U.S.C. §928(b); *Boe v. Dep't of the Navy/MWR*, 34 BRBS 108 (2000); *Hawkins v. Harbert Int'l, Inc.*, 33 BRBS 198 (1999). Before the district director, employer objected to the fee petition on the ground that it cannot be held liable for a fee pursuant to either subsection 28(a) or (b) in this case.

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<sup>1</sup> The record establishes that employer paid periods of temporary total disability for November 1 and 2, 2003, and from February 9, 2004, through September 21, 2004, temporary partial disability benefits from November 3, 2003, through February 8, 2004, and a non-scheduled award of permanent partial disability benefits from September 22, 2004, through October 17, 2004.

<sup>2</sup> Counsel sought an attorney's fee totaling \$6,866.47, representing 18 hours of attorney work at an hourly rate of \$225, and paralegal work consisting of 38.6 hours at an hourly rate of \$65, and 6.1 hours at an hourly rate of \$25, plus costs of \$154.97.

In his Order, the district director stated only that counsel submitted an application for a fee of \$6,866.47, and that he “reviewed the fee application taking into consideration the complexity of the case, the issues involved and the results obtained, the actual necessary work performed and other factors including the expertise of the attorney.” Compensation Order at 1. Based on these factors, he reduced the total attorney time by .8 hours, and ordered employer to “pay the sum of \$6,547.47 for legal services rendered to the claimant.” *Id.*

We agree with employer that the district director’s fee award cannot stand. The Order does not address employer’s objections to the fee petition. Therefore, we vacate the district director’s fee award, and we remand the case to him for further consideration. *Richardson*, 336 F.3d 1103, 37 BRBS 80(CRT); *Tait v. Ingalls Shipbuilding, Inc.*, 24 BRBS 59 (1990); *Trachsel v. Brady-Hamilton Stevedore Co.*, 15 BRBS 469 (1983). On remand, the district director must address employer’s objections to counsel’s fee petition, apply the appropriate law to the facts of this case to determine employer’s liability for an attorney’s fee, and explain his rationale for awarding or denying the fee as requested.

Accordingly, the district director’s Compensation Order Awarding Attorney Fees is vacated, and the case is remanded to the district director for reconsideration consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge