

BENNY R. EDWARDS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
VIRGINIA INTERNATIONAL)	DATE ISSUED: <u>Jan. 30, 2004</u>
TERMINALS)	
)	
and)	
)	
SIGNAL ADMINISTRATION)	
c/o ABERCROMBIE, SIMMONS)	
& GILLETTE OF VIRGINIA)	
)	
Employer/Carrier-)	ORDER on MOTION
Respondents)	for RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board's Decision and Order in the captioned case, *Edwards v. Virginia Int'l Terminals*, BRB No. 03-0244 (Nov. 25, 2003). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant has not responded to this motion, but has filed a petition for an attorney's fee for services performed before the Board in connection with this appeal.

In his decision, the administrative law judge denied claimant an employer-paid attorney's fee pursuant to Section 28(b) of the Act, 33 U.S.C. §928(b), because an informal conference was not held and the district director did not issue a recommendation with which employer refused to comply. Claimant appealed, contending that the district director, in essence, refused to convene an informal conference, and that the case relied upon by the administrative law judge, *Staftex Staffing v. Director, OWCP [Loredo]*, 237 F.3d 409, 34 BRBS 105(CRT), 35 BRBS 26(CRT) (5th Cir. 2000), is not controlling precedent in this Fourth Circuit case.

The Board stated that it need not reach the parties' contentions concerning Section 28(b) as fee liability could be assessed against employer pursuant to Section 28(a) of the Act, 33 U.S.C. §928(a). In this case, employer voluntarily paid benefits after claimant's injury and ceased benefits upon claimant's ability to return to work. Claimant thereafter filed a claim for additional benefits which employer declined to pay. The case was

referred the administrative law judge and employer then agreed to pay claimant the benefits in dispute. Pursuant to *Pool Co. v. Cooper*, 274 F.3d 173, 35 BRBS 109(CRT) (5th Cir. 2001), the Board held that, as claimant successfully prosecuted his claim, employer is liable for claimant's attorney's fee under Section 28(a). *See also Richardson v. Continental Grain Co.*, 336 F.3d 1103, 37 BRBS 80(CRT) (9th Cir. 2003). The Board remanded the case for the administrative law judge to determine the amount of the fee due claimant's counsel.

In its motion for reconsideration, employer contends that since counsel sought a fee of only \$117 for work performed before the administrative law judge and as employer did not object to the amount of the fee, the Board need not remand the case and may enter a fee award for \$117. We grant the motion for reconsideration and vacate that portion of the Board's decision remanding the case to the administrative law judge. Claimant's counsel is awarded a fee of \$117 for work performed before the administrative law judge.

Claimant counsel seeks an attorney's fee of \$1,581.00, representing 6 hours at an hourly rate of \$160 and 2.76 hours at an hourly rate of \$225. Employer has not objected to counsel's requested fee. We award counsel the fee as requested as it is reasonably commensurate with the necessary work performed in this appeal. 20 C.F.R. §802.203.

Accordingly, employer's motion for reconsideration is granted. 20 C.F.R. §802.409. That portion of the Board's decision remanding the case to the administrative law judge is vacated, and claimant's counsel is awarded a fee of \$117 for work performed before the administrative law judge. Claimant's counsel is awarded a fee of \$1,581.00 for work performed before the Board, to be paid directly to counsel by employer. 33 U.S.C. §928; 20 C.F.R. §802.203.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge