

BRB No. 98-0812

RONALD H. McCRAVEY )  
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 Claimant-Petitioner ) DATE ISSUED:  
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 v. )  
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 INGALLS SHIPBUILDING, )  
 INCORPORATED )  
 )  
 Self-Insured )  
 Employer-Respondent ) DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees and Order of Jeana F. Jackson, District Director, United States Department of Labor.

Scott O. Nelson (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Compensation Order Award of Attorney's Fee and Order denying claimant's motion for reconsideration (Case No. 6-157884) of District Director Jeana F. Jackson 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 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).

Claimant filed a claim for benefits under the Act based upon his alleged work-related

hearing impairment. Employer accepted liability for the claim and voluntarily paid permanent partial disability benefits to claimant on April 15, 1994, prior to any formal adjudication of the claim. On May 9, 1994, employer accepted liability for claimant's medical expenses, specifically hearing aids and the cost of claimant's initial hearing evaluation. Thereafter, claimant's counsel submitted a petition for an attorney's fee for work performed before the district director, requesting a fee totaling \$900, representing 6 hours of attorney's services at \$150 per hour, plus expenses of \$74. In her Compensation Order Award of Attorney's Fee dated December 10, 1997, the district director found that all time claimed prior to May 13, 1994, the thirtieth day following the filing of the claim, would be chargeable to claimant as a lien upon his compensation, but that given the minimal amount of claimant's award it would be inequitable to assess any fee against him as it would deprive him of any compensation for his injury. Next, the district director determined that, as the claim was accepted and benefits were paid on April 15, 1994, time claimed after that date was not chargeable to employer since no further benefits were derived after that date. The district director also denied \$19 of the requested legal expenses for xeroxing, as she found that this was included in overhead expenses, but awarded costs of \$55. In a letter dated February 10, 1998, the district director denied claimant's motion for reconsideration.

On appeal, claimant's counsel challenges only the district director's denial of an attorney's fee for services rendered after April 15, 1994. Employer responds, urging affirmance of the fee award.

Claimant's counsel asserts that, contrary to the district director's determination, all entries on the fee petition after April 15, 1994, reflect legal work that was required in order to ensure that this claim was properly wrapped up and, as such, these fees should be paid by employer as they are reasonable and necessary "wind up" services associated with the claim. We disagree. In denying the fee requested by claimant's counsel, the district director in the case at bar specifically found that the thirtieth day following the filing of the claim was May 13, 1994; the record does not dispute, and neither party challenges, this finding. Moreover, it is uncontroverted that employer tendered all disability and medical benefits to claimant prior to May 6, 1994. Thus, as employer did not decline to pay any compensation to claimant on or before the thirtieth day following the filing of this claim, we affirm the district director's determination that employer is not liable for claimant's counsel's attorney fees. *See* 33 U.S.C. §928; 20 C.F.R. §702.134.

Accordingly, the district director's Compensation Order is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge