

FRANCIS E. BOONE)	
)	
Claimant-Respondent)	
)	
v.)	
)	
PORT OF PORTLAND)	
)	DATE ISSUED: _____
and)	
)	
SAIF CORPORATION)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Compensation Order - Approval of Attorney Fee of Karen P. Goodwin, District Director, United States Department of Labor.

Gregory A. Bunnell (Pozzi, Wilson, Atchison, O'Leary & Conboy), Portland, Oregon, for claimant.

Norman Cole (SAIF Corporation), Portland, Oregon, for employer/carrier.

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

PER CURIAM:

Employer appeals the Compensation Order - Approval of Attorney Fee (OWCP No. 14-40506) of District Director Karen P. Goodwin 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 the law. *See, e.g., Tait v. Ingalls Shipbuilding, Inc.*, 24 BRBS 59 (1990).

On December 17, 1980, claimant was awarded permanent partial disability benefits because of work-related back and leg injuries sustained on September 22, 1978. The administrative law judge also awarded employer relief from continuing liability for benefits pursuant to Section 8(f), 33 U.S.C. §908(f). Claimant had apparently been represented before the administrative law judge by Donald R. Wilson, the same attorney whose fee before the district director is the subject of the current appeal. In July 1988, employer notified claimant that he was scheduled for a medical

assessment at the Emanuel Rehabilitation Center on July 19, 1988. Claimant could not attend, and employer rescheduled the appointment for October 18, 1988. Employer asked the examining physicians to evaluate claimant's condition and recommend appropriate treatment and medication. At employer's behest, claimant also underwent a medical assessment at Western Medical Consultants on February 27, 1991. Employer sought a determination as to whether there had been any change in claimant's medical condition. In June 1991, counsel filed a fee petition with the district director requesting \$1,334.40, representing 7.625 hours at a rate of \$175 per hour. In a letter accompanying the petition, counsel indicated his services related to both the 1988 and the 1991 medical evaluations, apparently because employer was considering seeking Section 22, 33 U.S.C. §922, modification of claimant's permanent partial disability award. Employer objected to the fee request, denying that the examinations had been scheduled for the purpose alleged and indicating that employer was merely exercising its right to periodically obtain medical examinations of one of its injured workers pursuant to Section 7(d)(4), 33 U.S.C. §907(d)(4) (1988).¹ Employer contended that, as it did not seek modification or reduce payments to claimant, there is no basis under Section 28, 33 U.S.C. §928, for assessing a fee against it.

The district director found that employer arranged for a medical examination on February 27, 1991, "for the purpose of determining whether the claimant remained permanently disabled, to clarify the claimant's current medical condition and treatment recommendation." Comp. Order at 1. She then determined that claimant successfully prosecuted his case, as he continues to receive permanent partial disability compensation, and she found employer "indicated that the purpose of the medical examination was in part to determine whether there was potential for a modification of the claimant's award. . . ." *Id.* at 2. The district director then awarded counsel the requested fee. *Id.*

Employer appeals the district director's fee award, contending it is not liable for payment of the fee. Alternatively, employer argues that if it is liable, it should only have to pay the amount associated with the 1991 examination, as the district director did not discuss the 1988 examination. Claimant's counsel responds, arguing that his petition sought approval of services rendered in connection with both examinations and that the award should be affirmed.

¹Section 7(d)(4) provides that an employer may suspend payment of further compensation if its employee unreasonably refuses to submit to an examination by a physician selected by employer.

We agree with the district director that claimant's attorney is entitled to a fee, payable by employer, for the services he rendered when claimant was asked to submit to two medical evaluations. On the facts of this case, we hold that the district director rationally determined employer is liable for a fee for services performed by claimant's counsel as a result of employer's scheduling claimant for two medical exams. We, therefore, uphold the district director's fee award.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge