



BRB No. 18-0145

STANLEY M. MACIASZ)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: <u>July 10, 2018</u>
CONSOLIDATION COAL COMPANY)	
)	
Self-Insured Employer-)	
Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Order Award of Attorney’s Fee of T.A. Magyar, District Director, United States Department of Labor.

Stephen P. Moschetta (The Moschetta Law Firm, P.C.), Washington, Pennsylvania, for claimant.

Leonard Gerson (Kate S. O’Scannlain, Solicitor of Labor; Maia S. Fisher, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers’ Compensation Programs, United States Department of Labor.

Before: BOGGS, GILLIGAN, and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order Award of Attorney’s Fee (OWCP No. 04-040602) of District Director of T.A. Magyar 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 fee award of the district director must be affirmed unless it is shown

by the challenging party to be arbitrary, capricious, based on an abuse of discretion, or not in accordance with law. *See Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986); *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant sought benefits under the Act for a work-related binaural hearing loss. Pursuant to the stipulations of the parties, the district director issued an Order on February 25, 2016, awarding claimant permanent partial disability benefits.

On March 7, 2016, claimant's counsel submitted a fee petition to the district director seeking \$11,030.50 in an attorney's fee for services rendered and costs accrued between October 25, 2012 and February 25, 2016, while the case was pending before the Office of Workers' Compensation Programs.¹ On April 13, 2016, employer filed objections to counsel's fee request. On May 3, 2016, claimant's counsel replied to employer's objections and sought an additional fee of \$420 for the time spent researching and preparing his written response. On December 29, 2016, the district director issued a recommendation that fee liability is governed by Section 28(a), 33 U.S.C. §928(a), and that employer is liable for an attorney's fee, but that itemized entries contained in counsel's fee petition reflect undocumented work or work related to Section 8(f), which is not compensable. She consequently recommended that the parties resolve the fee issue for \$2,500. Over the next year, claimant's counsel sent three letters to the district director disagreeing with her December 29, 2016 recommendation and requesting the entry of an appealable order.

On December 7, 2017, the district director issued an Order summarily awarding claimant's counsel an attorney's fee of \$2,500, payable by employer. Claimant appeals.

On appeal, claimant's counsel challenges the district director's fee award, contending the district director erred in failing to explain the basis for the award. Counsel surmises that a reduced fee was awarded for the reasons expressed in the district director's December 29, 2016 recommendation letter, and asserts those reasons are not in accordance with law. The Director, Office of Workers' Compensation Programs, responds, averring that the case should be remanded for the district director to issue an order that adequately explains the basis for the fee award. Employer has not responded to claimant's counsel's appeal.

We agree that the district director's fee award cannot be affirmed. The district director's failure to provide any rationale in awarding a fee of \$2,500 renders the award

¹ The requested sum of \$11,030.50 represents \$10,530.50 for legal services and \$500 for costs. Counsel sought an hourly rate of \$350 for his services and \$90 for those of his paraprofessional.

arbitrary. *See, e.g., Steevens v. Umpqua River Navigation*, 35 BRBS 129 (2001); *Jensen v. Weeks Marine*, 33 BRBS 97 (1999); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). Moreover, the Board cannot review the district director's December 29, 2016, letter of recommendation, as it is not an appealable order. *See generally Craven v. Director, OWCP*, 604 F.3d 902, 44 BRBS 31(CRT) (5th Cir. 2010). Therefore, we vacate the district director's fee award and remand the case. On remand, the district director must address employer's objections to counsel's fee petition, provide specific reasons for any reductions in the requested fee, and delineate the hourly rates, compensable hours, and costs awarded to claimant's counsel. *See Steevens*, 35 BRBS at 136-137; *see generally Carter v. Caleb Brett, LLC*, 757 F.3d 866, 48 BRBS 21(CRT) (9th Cir. 2014); *Stanhope v. Electric Boat Corp.*, 44 BRBS 107 (2010); 20 C.F.R. §702.132.

Accordingly, the district director's Order Award of Attorney's Fee is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS

Administrative Appeals Judge

RYAN GILLIGAN

Administrative Appeals Judge

JONATHAN ROLFE

Administrative Appeals Judge