

JOSEPH MARINO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TRANS OCEAN MARITIME	)	
	)	
and	)	
	)	
RELIANCE NATIONAL INSURANCE	)	DATE ISSUED: 06/26/2006
COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER

Claimant appeals the Order (Case No. 02-0128074) denying an attorney's fee of District Director Emma Riley. The Director, Office of Workers' Compensation Programs, has filed a motion to remand the case to the district director so that she may explain the basis for her decision.

The Director states that claimant filed a claim for a June 23, 2000, injury to his foot. The case was forwarded to the Office of Administrative Law Judges, but, by Order dated April 18, 2005, the administrative law judge canceled the hearing and remanded the case to the district director on the Director's motion as employer averred it had dissolved. *See* 33 U.S.C. §918(b).

Subsequently, by motion dated October 4, 2005, claimant's counsel filed a petition with the district director seeking an attorney's fee and expenses of \$32,509.70, for the period spanning August 2000 to August 2005. The district director denied the fee request stating only, "Based upon review of the case file, there has not been a successful prosecution of this claim and as such no attorney's fee is due." Order at 1. In his motion

to remand, the Director contends that the district director's Order lacks sufficient detail for the Board to ascertain whether the basis for her decision is correct.

We grant the Director's motion. Claimant's entitlement to any attorney's fee under the Act is predicated upon claimant's obtaining benefits. *See* 33 U.S.C. §928(a)-(c).<sup>1</sup> While the requirements of the Administrative Procedure Act are not strictly applicable to proceedings before the district director, 5 U.S.C. §557; 33 U.S.C. §919(d), the Board nonetheless has held that the district director's fee award must contain sufficient detail so that the Board can review it to determine if it is "arbitrary, capricious, an abuse of discretion, or not in accordance with law." *See generally Ferguson v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 17 (2002); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990); *see also Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10<sup>th</sup> Cir. 1997). In this case neither the district director's order nor the administrative file forwarded to the Board contains any information concerning the disposition of claimant's claim. The Board thus is unable to review the propriety of the district director's statement that the claim was not successfully prosecuted and the resultant denial of an attorney's fee. Therefore, we must remand the case to the district director for further explication of the disposition of claimant's claim and the basis for her statement that the claim was not successfully prosecuted.

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<sup>1</sup> Employer may be held liable for claimant's attorney's fee only if the conditions of either Section 28(a) or Section 28(b) are met. If neither of these subsections is applicable, claimant may be held liable for his attorney's fees under Section 28(c) as a lien on his compensation. *See generally Director, OWCP v. Robertson*, 625 F.2d 873, 12 BRBS 550 (9<sup>th</sup> Cir. 1980); *Ferguson v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 17 (2002).

Accordingly, we grant the Director's motion. The district director's order is vacated, and we remand this case to the district director. The district director should issue an order fully explaining the basis for her decision denying an attorney's fee. Any aggrieved party may file an appeal after the new order is filed. 33 U.S.C. §921.

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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BETTY JEAN HALL  
Administrative Appeals Judge