

BRB No. 98-1358

GEORGE LOURENCO)	
)	
Claimant-Respondent)	
)	
v.)	
)	
PUERTO RICO MARINE)	DATE ISSUED: <u>June 24, 1999</u>
MANAGEMENT)	
)	
and)	
)	
TRAVELERS INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Narrative Order Approving Attorney's Fees of Richard V. Robilotti, District Director, United States Department of Labor.

Alan C. Rassner (Rassner, Rassner & Olman), New York, New York, for claimant.

V. William Farrington, Jr. (Cornelius, Sartin & Murphy), New Orleans, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer/carrier (employer) appeals the Narrative Order Approving Attorney's Fees (2-75844) of District Director Richard V. Robilotti 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 law. See *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On May 18, 1988, Administrative Law Judge Aaron Silverman issued a Decision and Order in which he found claimant permanently totally disabled as a result of an injury on January 16, 1982. On October 23, 1996, Dr. Lombardi performed a medical evaluation of claimant, and a functional capacities evaluation was conducted on September 7, 1996. Employer then prepared a labor market survey on March 19, 1997. Based on this evidence, employer filed a petition for modification, pursuant to Section 22 of the Act, 33 U.S.C. §922, with the district director on April 22, 1998, alleging that claimant could perform some employment and was consequently no longer permanently totally disabled. An informal conference was held. The district director denied employer's modification request.

Subsequently, claimant's counsel filed a fee petition, requesting \$2,145, representing 7.8 hours of work performed at an hourly rate of \$275. Employer objected, contending that the fee request was premature and the hourly rate requested was excessive. In a "narrative order,"¹ the district director rejected employer's arguments, reasoning that claimant's counsel successfully defended claimant's interests against employer's modification petition. The district director also concluded that the \$275 hourly rate requested was an appropriate hourly rate for New York City. He accordingly awarded counsel a fee of \$2,145, the full amount requested.

Employer appeals, contending that as the modification issue is set for a formal hearing and claimant's compensation benefits may be reduced from permanent total to permanent partial disability, the district director's fee award cannot be upheld; employer therefore requests that the Board hold this appeal in abeyance pending the outcome of the hearing. Claimant responds, urging affirmance.

We reject employer's contention that the district director's fee award is premature. It is well-established that to further the goal of administrative efficiency, an administrative law judge or district director may render an attorney's fee determination when a decision is issued; such an award, however, does not become effective and thus is not enforceable until all appeals have been exhausted. *Wells v.*

¹This term was used by the district director, apparently due to the fact that the order is captioned more similarly to a letter than a formal order.

International Great Lakes Shipping Co., 693 F.2d 663, 15 BRBS 47 (CRT)(7th Cir. 1982); *Williams v. Halter Marine Service, Inc.* 19 BRBS 248 (1987); *Bruce v. Atlantic Marine, Inc.*, 12 BRBS 65 (1980), *aff'd*, 661 F.2d 898, 14 BRBS 63 (5th Cir. 1981); 33 U.S.C. §§921(d), 928(a). We hold, therefore, that the district director committed no error in considering counsel's fee petition despite the fact that the case was scheduled for a formal hearing; however, payment of any award for work on modification should await the outcome of the hearing and any appeals. Employer's request to hold this appeal in abeyance pending the outcome of the hearing is denied.

Accordingly, the district director's award of an attorney's fee is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge