

EARL LEE ABRAMS)
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 Claimant-Petitioner)
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 v.)
)
 INGALLS SHIPBUILDING,) DATE ISSUED: March 30, 2001
 INCORPORATED)
)
 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Compensation Order - Award of Attorney's Fee of Jeana F. LaRock, District Director, United States Department of Labor.

Deborah A. Bass-Frazier (Huey & Leon), Mobile, Alabama, for claimant.

Donald P. Moore (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Compensation Order - Award of Attorney's Fee dated March 27, 2000 (Case No. 6-150386) of District Director Jeana F. LaRock 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). An attorney's fee determination 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 for a work-related back injury, and was provided legal representation by Atty. Deborah Bass-Frazier from April 26, 1993 through June 25, 1993. Upon withdrawal from representation on June 25, 1993, Atty. Bass-Frazier filed a fee petition for work performed before the district director, requesting a fee totaling \$2,206.25, representing 17.65 hours at \$125 per hour. Thereafter, claimant obtained

legal representation from another attorney, and, on January 9, 1996, a Section 8(i), 33 U.S.C. §908(i), settlement between the parties was approved by an administrative law judge. Subsequently, by letter dated February 4, 1996, employer filed objections to the fee petition previously filed by Atty. Bass-Frazier.

In a Compensation Order filed October 30, 1998, the district director, after erroneously noting that employer had not objected to Atty. Bass-Frazier's fee petition, approved the requested fee of \$2,206.25. Employer immediately thereafter submitted a letter dated November 3, 1998 to the district director, stating that it had previously filed objections to the fee request and attaching those objections for the district director's review. Employer concluded its letter with a request that the district director vacate her October 30, 1998, Order and consider employer's objections to the fee request. Thereafter, in a Compensation Order dated March 27, 2000, the district director acknowledged that her previous statement in her October 30, 1998 Order that employer had not filed objections to the fee petition was erroneous, vacated that prior Order and reconsidered claimant's prior counsel's fee petition in light of employer's timely objections. The district director concluded that Atty. Bass-Frazier was not entitled to an attorney's fee and, accordingly, denied her fee request.

On appeal, claimant contends that the district director lacked jurisdiction to issue the March 27, 2000, Order, in which she vacated her prior Order issued October 30, 1998. Accordingly, claimant requests that the Board vacate the district director's March 27, 2000, Order and reinstate the district director's October 30, 1998, Order. Employer responds, urging affirmance of the district director's March 27, 2000, Order.

As an initial matter, we note that claimant's sole challenge on appeal to the validity of the district director's March 27, 2000, Order relates to the district director's jurisdiction to vacate her prior Order awarding an attorney's fee. Claimant does not present arguments with respect to the merits of the determination made by the district director in her March 27, 2000, Order that counsel is not entitled to a fee. Rather, in arguing that the district director was without jurisdiction to vacate her October 30, 1998, Order, claimant contends that this initial Order became final upon employer's failure to file either a timely appeal with the Benefits Review Board or a timely motion for reconsideration with the district director. Employer responds that the October 30, 1998, Order did not become final, inasmuch as the time for filing a Notice of Appeal with the Board was tolled by employer's November 3, 1998, letter to the district director which qualifies as a timely motion for reconsideration.

Section 28 of the Act, 33 U.S.C. §928, and the regulation at 20 C.F.R. §702.132 govern the district director's authority to award in a compensation order an attorney's fee for work performed before the district director. Section 702.132 requires that the other parties be served with claimant's request for an attorney's fee. Moreover, due process requires that employer be given notice of the fee petition and a reasonable time to respond to it. *See Todd*

Shipyards Corp. v. Director, OWCP, 545 F.2d 1176, 5 BRBS 23 (9th Cir. 1976); *Harmon v. Sea-Land Service, Inc.*, 31 BRBS 45, 49 (1997); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279, 288 (1990). A district director's attorney's fee award is a discretionary act directly appealable to the Board, unless the challenge to the award involves disputed facts requiring an evidentiary hearing before an administrative law judge. *Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT)(9th Cir. 2000), *cert. denied*, 121 S.Ct. 378 (2000). A district director's order awarding or denying an attorney's fee becomes final for appeal purposes if an appeal to the Board is not filed within thirty days after issuance of the district director's order. *See Healy Tibbitts Builders*, 201 F.3d at 1097, 33 BRBS at 214(CRT); *Bellmer v. Jones Oregon Stevedoring Co.*, 32 BRBS 245 (1998); 33 U.S.C. §921(a); 20 C.F.R. §§702.350, 802.205. However, a timely request for reconsideration of the district director's attorney's fee order tolls the time for filing an appeal with the Board. Thus, in a longshore claim, if reconsideration is requested within ten days of the filing of the district director's attorney's fee order, the time for filing an appeal with the Board is suspended and commences again only on the date an order on reconsideration is filed by the district director. *See* 20 C.F.R. §802.206. *See generally Galle v. Ingalls Shipbuilding, Inc.*, 33 BRBS 141 (1999), *aff'd*, F.3d , No. 00-60075 (5th Cir. March 26, 2001); *Hamilton v. Ingalls Shipbuilding, Inc.*, 30 BRBS 84 (1996); *Bogdis v. Marine Terminals Corp.*, 23 BRBS 136 (1989).

In the instant case, claimant acknowledges that employer filed timely objections to the fee petition submitted by his prior counsel, that the district director erred in her initial Order when she stated that objections had not been filed, and that a timely motion for reconsideration tolls the time for appealing the district director's fee order pursuant to Section 802.206. Claimant avers, however, that employer's November 3, 1998 letter to the district director does not comport with the proper form for a motion for reconsideration and, thus, should not have been considered a timely motion for reconsideration by the district director. We disagree. Employer's November 3, 1998, letter contains all the information required of a motion for reconsideration. Specifically, employer identified the error made by the district director in her October 30, 1998, Order, attached a copy of the objections to the fee petition that previously had been filed by employer, and requested that the district director vacate her October 30, 1998, Order and consider employer's objections to the fee petition. In addition, employer's letter was served on claimant's counsel, was not incorporated in another document and contained no information extraneous to the request for reconsideration. *See* 20 C.F.R. §802.206; *see generally* 20 C.F.R. §§802.216, 802.219. Employer's November 3, 1998 letter unequivocally evinces an intent to seek reconsideration by the district director of her October 30, 1998, Order in order to cure her error in failing to consider the timely objections to claimant's fee petition that previously had been filed by employer. *Cf. Healy Tibbitts Builders*, 201 F.3d at 1097, 33 BRBS at 214(CRT)(holding that a claimant's request for a hearing before an administrative law judge does not evince an intent to seek Board review). Thus, we hold that the district director properly exercised her

discretion in considering employer's November 3, 1998, letter to be a timely motion for reconsideration of her October 30, 1998, Order. *See generally Todd Shipyards*, 545 F.2d 1176, 5 BRBS 23; *Devine*, 23 BRBS at 288.¹ Accordingly, as we have upheld the district director's jurisdiction to reconsider her October 30, 1998 Order, we affirm her March 27, 2000 Order denying a fee to claimant's attorney.

Lastly, claimant seeks an enhancement of the fee originally sought for work performed at the district director level on the basis of delay in the payment of a fee, and additionally seeks an attorney's fee award for work performed before the Board. As claimant was unsuccessful on appeal in establishing entitlement to a fee for services performed before the district director, counsel is entitled to neither an enhancement of her requested fee for work performed before the district director nor a fee before the Board. *See* 33 U.S.C. §928; 20 C.F.R. §§702.134, 802.203; *see generally Bellmer*, 32 BRBS 245; *Cutting v. General Dynamics Corp.*, 21 BRBS 108 (1988).

¹Moreover, employer's request for reconsideration by the district director was in the interest of administrative efficiency. As set forth previously, claimant concedes that employer's objections were timely filed. Thus, had employer taken the alternative course of action available to it and immediately filed an appeal with the Board, the Board would have vacated the district director's fee award and remanded the case to the district director to consider employer's objections to the fee petition, consistent with the requirements of due process, which is precisely what was accomplished by the district director on reconsideration.

Accordingly, the district director's Order denying an attorney's fee to claimant's counsel is affirmed. Claimant's requests for attorney's fees before the Board and for enhancement of attorney's fees before the district director are denied.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge