

COLEMAN McKOY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Compensation Order-Award of Attorney's Fee of Chris J. Gleasman, District Director, United States Department of Labor.

Traci M. Castille (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Employer appeals the Compensation Order-Award of Attorney's Fee (Case No. 7-142862) of District Director Chris J. Gleasman 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 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's counsel sought an attorney's fee of \$1,518.75, representing 10.125 hours of legal services performed at an hourly rate of \$150, and \$12.50 in expenses, for work performed before the district director in connection with claimant's hearing loss claim. Having found that employer had not submitted any formal objections to the fee petition, the district director, in his Compensation Order, determined that employer was not liable for an attorney's fee for work performed

prior to the time the claim was filed on February 19, 1997, and thus, reduced the hours sought by counsel to 5.375. The district director thereafter awarded claimant's counsel an attorney's fee of \$806.25, representing 5.375 hours of legal services performed at an hourly rate of \$150. Employer appeals the district director's award, contending that it did in fact file objections to claimant's counsel's attorney's fee petition, and requesting that the district director's award be vacated. Claimant has not filed a response brief in the instant matter.

Employer has attached to its brief a copy of its objections, dated February 5, 1998, to counsel's attorney's fee request, which the district director did not consider in his March 27, 1998, Compensation Order. It is well-established that due process requires that a fee request be served on employer and that it be given a reasonable time to respond to the request. See, e.g., *Todd Shipyards Corp. v. Director, OWCP*, 545 F.2d 1176, 5 BRBS 23 (9th Cir. 1976); *Codd v. Stevedoring Services of America*, 32 BRBS 143, 150 (1998); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279, 288 (1990)(Lawrence, J., dissenting on other grounds). Implicit in this requirement is that employer's objections to the fee request must be considered. Accordingly, as it appears that employer timely filed a response to the fee request, we vacate the district director's award of an attorney's fee to claimant's counsel and remand the case for the district director to consider employer's specific objections to counsel's attorney's fee petition.<sup>1</sup>

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<sup>1</sup>Inasmuch as the district director did not consider employer's objections below, we decline to address employer's substantive contentions.

Accordingly, the Compensation Order-Award of Attorney's Fee is vacated, and the case is remanded for reconsideration consistent with this opinion.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge