

BRB No. 98-1013

DONALD SINCLAIR)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING)	DATE ISSUED:
AND DRY DOCK COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Order - Award of Attorney's Fee of B. E. Voultides, District Director, United States Department of Labor.

John H. Klein (Rutter & Montagna, L.L.P.), Norfolk, Virginia, for claimant.

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

PER CURIAM:

Claimant appeals the Order - Award of Attorney's Fee (Case No. 5-86694) of District Director B. E. Voultides 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 previous counsel in this case, Richard B. Donaldson, Jr., filed an attorney's fee petition before the office of the district director on January 9, 1998, requesting a total of \$1,965 in an attorney's fee for 13.10 hours of services at an hourly rate of \$150. The district director, in an Order dated March 18, 1998,

awarded counsel this sum, and found claimant liable for the payment of the fee as requested by Mr. Donaldson. Claimant subsequently obtained the services of a new attorney and filed this appeal, contending that employer is liable for any fee owed Mr. Donaldson. Claimant also contends that the district director failed to comply with the requirements of 20 C.F.R. §702.132 in that he did not discuss the regulatory criteria (specifically, the complexity of the issues or the amount of benefits awarded to claimant) or claimant's ability to pay the fee. In addition, claimant contends that Mr. Donaldson's fee petition is inadequate.

Under Section 28(a) of the Act, 33 U.S.C. §928(a), if an employer declines to pay any compensation within 30 days after receiving written notice of a claim from the district director, and the claimant's attorney's services result in a successful prosecution of the claim, claimant is entitled to an attorney's fee payable by employer. 33 U.S.C. §928(a). Under Section 28(b) of the Act, 33 U.S.C. §928(b), when an employer voluntarily pays or tenders benefits and thereafter a controversy arises over additional compensation due, the employer will be liable for an attorney's fee if the claimant succeeds in obtaining greater compensation than that agreed to by the employer. 33 U.S.C. §928(b). If Section 28(a) or (b) does not apply, an attorney's fee may be made a lien upon the compensation due to claimant pursuant to 33 U.S.C. §928(c). Under such circumstances, any fee approved must take into account the financial circumstances of the claimant. 20 C.F.R. §702.132(a).

We agree with claimant's contention that the district director failed to adequately explain the attorney's fee award. The district director's Order consists merely of a summary statement approving Mr. Donaldson's attorney's fee application because claimant did not object to the amount of or responsibility for the payment of the fee. The Order does not indicate whether the district director considered the complexity of the issues in the case or took into consideration the amount of benefits awarded to claimant or claimant's ability to pay the fee.¹ 20 C.F.R. §702.132(a). Moreover, there is no explanation as to why claimant is liable for the attorney's fee. As the district director's attorney's fee award is not adequately explained, it must be vacated and the case remanded for more specific findings in accordance with Section 28 of the Act and 20 C.F.R. §702.132. See

¹Claimant's brief states that claimant is unable to pay the fee as he is out of work suffering from not only a right wrist injury, the subject of this claim, but also a subsequent left wrist injury.

generally *Thompson v. Lockheed Shipbuilding & Const. Co.*, 21 BRBS 94, 97 (1988).

Accordingly, the district director's attorney's fee award is vacated and the case is remanded for proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge