

NEDA NAHAS)
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 Claimant-Respondent)
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 v.)
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 CHEMONICS INTERNATIONAL) DATE ISSUED: Nov. 14, 2002
 INCORPORATED)
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 and)
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 CNA GLOBAL)
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 Employer/Carrier-)
 Petitioners) DECISION and ORDER

Appeal of the Compensation Order Award of Attorney=s Fees and the Amended Compensation Order of Richard V. Robilotti, District Director, United States Department of Labor.

Jorden N. Pederson, Jr. (Baker, Garber, Duffy & Pederson), Hoboken, New Jersey, for claimant.

Roger A. Levy (Laughlin, Falbo, Levy & Moresi, LLP), San Francisco, California, for employer/carrier.

Before: SMITH, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney=s Fees and the Amended Compensation Order (Case No. 02-0128998) 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.*, as extended by the Defense Base Act, 42 U.S.C. '1651 *et seq.* (the Act). The amount of an attorney=s fee award is discretionary, and will not be set aside unless the challenging party shows it to be arbitrary, capricious, an abuse of discretion or not in accordance with law. See *Muscella v. Sun Shipbuilding, Inc.*, 12 BRBS 272 (1980).

The facts in this case are gleaned from employer=s brief and attachments thereto, as no formal record was compiled in this matter. Claimant alleged that her chronic fatigue syndrome was caused by an infectious disease she contracted during her employment for employer in Egypt. Claimant notified employer of her injury in November 2000, and employer filed a notice of controversion. Employer later rescinded its controversion, and began paying claimant benefits on May 31, 2001. Claimant disputed the compensation rate, and on July 2, 2001, employer agreed to the higher rate. Attach. C.

On July 14, 2001, employer was notified by the district director that claimant had retained counsel and had filed a claim. Attach. H. An informal conference was convened on August 21, 2001. The disputed issues were listed as: (1) average weekly wage; (2) confirmation of payments (claimant alleged she had not received all disability checks); (3) date of onset; and (4) medical treatment. Attach. E. The district director recommended that benefits continue at the maximum compensation rate, and that payroll records should be submitted by employer so that the correct average weekly wage could be determined. Employer=s carrier was to verify whether the Amissing@ checks were cashed or returned. The date of onset was set at September 14, 2000, and carrier was to locate for claimant a medical care case manager near claimant=s home in Hawaii. *Id.*

By letter dated October 19, 2001, to the claims examiner, claimant=s counsel stated that claimant had not received all payments due. See Attach. J. He also filed a fee petition, seeking a fee of \$3,300 for 11 hours of attorney services at \$300 per hour, to be assessed against employer. Attach. F. By Order filed on November 19, 2001, the district director awarded counsel the requested fee, to be paid by employer. On November 19, 2001, the district director received a facsimile from employer of its objections to the fee petition, which were dated November 6, 2002. Attach. G. The district director issued an amended order on November 21, 2001, summarily awarding counsel a fee of \$2,750 for 11 hours of services at \$250 per hour, to be paid by employer.

Employer appeals the fee award, contending the district director failed to adequately address its objections to the fee petition. With regard to specific issues, employer contends that the district director erred in holding it liable for claimant=s attorney=s fee as neither Section 28(a) nor (b) applies to this case, 33 U.S.C. '928(a), (b). Employer further contends that counsel billed for the services of a legal assistant at the hourly rate for an attorney, that the hourly rate awarded is too high, and that the number of hours billed is excessive for the work performed. Claimant=s counsel has filed a letter stating that he will not be responding to employer=s brief.

An attorney=s fee must be awarded in accordance with Section 28 of the Act, and the applicable regulation, 20 C.F.R. '702.132. Under Section 28(a), A[i]f the

employer or carrier declines to pay any compensation on or before the thirtieth day after receiving written notice of a claim for compensation having been filed 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),

If the employer or carrier pays or tenders payment of compensation without an award pursuant to section 914(a) and (b) of this title, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the [district director] . . . shall set the matter for an informal conference and following such conference the [district director] . . . shall recommend in writing a disposition of the controversy. If the employer or carrier refuse [sic] to accept such written recommendation, within fourteen days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation and thereafter utilizes the services of an attorney at law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation.

33 U.S.C. '928(b). The regulation at 20 C.F.R. '702.132(a) states that any fee approved must be reasonably commensurate with the necessary work done, and should account for the quality of the representation, the complexity of the legal issues, and the amount of benefits awarded.

We agree with employer that the district director's fee award must be vacated and the case remanded for reconsideration. *Steevens v. Umpqua River Navigation*, 35 BRBS 129 (2001); *Jensen v. Weeks Marine, Inc.*, 33 BRBS 97 (1999). Each of the issues raised on appeal was raised by employer in its objections to the fee petition, and the district director did not address these objections, except to summarily reduce the hourly rate. The district director's mere recitation of the regulatory criteria in his initial order does not suffice to justify the fee award in view of employer's objections. *Devine v. Atlantic Container Services/G.I.E.*, 23 BRBS 279 (1990). Moreover, the district director did not state the basis for his summary conclusion that employer is liable for claimant's attorney's fee. The district director must consider employer's liability for the fee in terms of Section 28(a), (b), and in light of employer's objections, and specifically state on which subsection employer's liability rests. If neither subsection (a) nor (b) is applicable, the district director should consider whether claimant is liable for her attorney's fee. 28 U.S.C.

'928(c); 20 C.F.R. '702.132(a). Therefore, we vacate the district director=s fee award, and we remand the case for consideration of employer=s objections to its liability for, and the amount of, any attorney=s fee to which claimant=s counsel is entitled. *Steevens*, 35 BRBS at 135-136.

Accordingly, the district director=s fee award is vacated, and the case is remanded for further consideration consistent with this decision.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge