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 Claimant-Petitioner)
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 v.)
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 LOGISTEC OF CONNECTICUT,)
 INCORPORATED)
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 and)
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 SIGNAL MUTUAL INDEMNITY) DATE ISSUED: 10/31/2008
 ASSOCIATION)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Compensation Order Vacating Award of Attorney Fees and the Supplemental Order Upon Reconsideration of Denial of Attorney Fees under Section 28(a) (b) of David B. Groeneveld, District Director, United States Department of Labor.

David A. Kelly (Monstream & May, L.L.P.), Glastonbury, Connecticut, for claimant.

Christopher J. Field (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

Kathleen H. Kim (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Compensation Order Vacating Award of Attorney Fees and the Supplemental Order Upon Reconsideration of Denial of Attorney Fees under Section 28(a) (b) of District Director David B. Groeneveld 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 district director's orders must be affirmed unless they are shown to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant injured his right knee and left shin in a fall at work on October 27, 2004. On November 11, 2004, employer instituted payments of temporary total disability benefits and authorized medical treatment. Claimant filed a claim on December 2, 2004. The district director served this claim on employer on January 14, 2005. It appears that claimant returned to his usual work in February 2005. On February 18, 2005, employer filed form LS-208, Notice of Final Payment, stating it had paid temporary total disability benefits from October 28, 2004 to January 23, 2005, and temporary partial disability benefits from January 24 to 30, 2005. On March 6, 2006, employer paid claimant permanent partial disability benefits for a five percent impairment to the leg. Claimant contested the average weekly wage calculation in correspondence with the district director and employer. In January 2007, employer agreed to pay additional benefits based on an increased average weekly wage and no further proceedings were necessary.

On May 2, 2007, claimant's counsel filed a petition for an attorney's fee with the district director, requesting a fee of \$4,759.47. Counsel served the fee petition on employer/carrier. On May 25, 2007, the district director also sent employer and carrier a copy of the fee petition and stated that employer should file any objections within 21 days. If employer did not respond, the district director stated he would assume employer agreed to the fee requested. On June 29, 2007, having not received any response from employer, the district director awarded claimant's counsel a fee of \$4,188.97, payable by employer.

Employer then retained counsel and filed a timely motion for reconsideration of the fee award, submitting objections to the fee petition. The district director accepted the objections, and agreed with employer that it cannot be held liable for claimant's fee under either Section 28(a) or (b), 33 U.S.C. §928(a), (b). The district director therefore vacated the fee award against employer. He suggested that counsel resubmit a fee petition to seek a fee payable by claimant pursuant to Section 28(c), 33 U.S.C. §928(c).

Claimant filed a motion for reconsideration, stating that employer's objections were out of time as the district director had set a specific deadline for response to the fee petition. Claimant also contended the district director erred in finding that employer is not liable for a fee pursuant to Section 28(a). The district director denied claimant's motion for reconsideration.

On appeal, claimant challenges only the district director's acceptance of employer's objections via a motion for reconsideration, contending the district director abused his discretion since he had set a deadline for employer to respond to the fee petition, which employer had ignored. Claimant thus avers that the initial fee award must be reinstated. Employer responds, urging affirmance of the district director's action. The Director, Office of Workers' Compensation Programs (the Director) responds, stating the district director did not abuse his discretion in accepting employer's late objections, which were provided in a timely filed motion for reconsideration. Nonetheless, "the Director confesses that the [district director's] orders were flawed for another reason. The [district director] failed to make factual findings necessary to support his decision that section 28(a) does not apply to claimant's claims." The Director contends the case should be remanded to the district director for specific findings regarding Section 28(a). Neither claimant nor employer has replied to the Director's response brief.

We reject claimant's contention that the district director erred in entertaining employer's objections to counsel's fee petition, which were first filed in its motion for reconsideration. While employer's objections were not timely filed pursuant to the district director's May 25, 2007, letter, the district director did not abuse his discretion in accepting objections filed in a timely motion for reconsideration. *See generally Harmon v. Sea-Land Service, Inc.*, 31 BRBS 45 (1997); *Hudson v. Ingalls Shipbuilding, Inc.*, 28 BRBS 334 (1994); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980). In addition, although claimant correctly contends the district director issued his order vacating his fee award prior to receiving claimant's objection to employer's motion for reconsideration, this defect was corrected by the district director's full consideration of claimant's subsequent motion for reconsideration.

We also reject the Director's contention that the case should be remanded for the district director to address specifically the basis for his conclusion that Section 28(a) is inapplicable. Claimant did not appeal the finding that employer is not liable for a fee pursuant to Section 28(a) and the Director has not stated a basis for remand in this case. Employer voluntarily commenced compensation payments shortly after claimant's injury. The district director served the claim on employer on January 14, 2005, and employer's payments continued until January 30, 2005. As employer did not "decline to pay any compensation" within 30 days of its receipt of the claim, the district director properly stated that employer is not liable for claimant's attorney's fee pursuant to Section 28(a).

See Pittsburgh & Conneaut Dock Co. v. Director, OWCP, 473 F.3d 253, 40 BRBS 73(CRT) (6th Cir. 2007); *Virginia International Terminals, Inc. v. Edwards*, 398 F.3d 313, 39 BRBS 1(CRT) (4th Cir. 2005), *cert. denied*, 546 U.S. 960 (2005); *Andrepoint v. Murphy Exploration & Prod. Co.*, 41 BRBS 73 (2007) (Hall, J., concurring) (decision on reconsideration). The district director's denial of an attorney's fee payable by employer therefore is affirmed.

Accordingly, the district director's Compensation Order Vacating Award of Attorney Fees and the Supplemental Order Upon Reconsideration of Denial of Attorney Fees under Section 28(a) (b) are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge