

BRB No. 12-0455

HARRIET ROSENTHAL)	
(Widow of NORMAN ROSENTHAL))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ELECTRIC BOAT CORPORATION)	DATE ISSUED: 10/31/2012
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Respondent)	ORDER

Claimant appeals the May 14, 2012, letter of the district director denying claimant's counsel's petition for an attorney's fee payable by employer. The Director, Office of Workers' Compensation Programs (the Director), has filed a motion to dismiss claimant's appeal, stating that the district director's letter does not constitute a formal compensation order, and requesting the Board remand the case to the district director for the issuance of a formal order granting or denying counsel's fee petition. Claimant has responded to the Director's motion, agreeing that the Board should remand the case to the district director.

Claimant's husband, the decedent, worked for employer between 1951 and June 1985. In a Decision and Order dated February 2, 1993, decedent was awarded ongoing permanent total disability compensation, 33 U.S.C. §908(a), and employer was granted relief pursuant to Section 8(f). 33 U.S.C. §908(f). Decedent died on May 26, 2011, and claimant filed a claim for death benefits. 33 U.S.C. §909. On January 18, 2012, the district director issued a Compensation Order awarding claimant death benefits. On January 24, 2012, claimant's counsel filed with the district director a petition requesting an attorney's fee, payable by employer, for services performed on behalf of claimant in regard to her claim for death benefits. In a letter to claimant's counsel dated May 14,

2012, the district director stated only that he had determined that employer is not liable for counsel's attorney's fee, but that counsel may consider requesting an attorney's fee payable by claimant pursuant to Section 28(c) of the Act, 33 U.S.C. §928(c). Claimant filed an appeal of the district director's letter. 33 U.S.C. §921(b). The Director filed a motion to dismiss claimant's appeal and to remand the case to the district director. Claimant filed a response, agreeing with the Director's requested motion.

We agree that claimant's appeal must be dismissed and the case remanded to the district director for the issuance of a formal order granting or denying the fee petition and stating the grounds therefor. *See* 33 U.S.C. §§919(e), 928; *Hill v. Nacirema Operating Co.*, 12 BRBS 119 (1980); *see generally Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir.), *cert. denied*, 531 U.S. 956 (2000). Moreover, the district director's letter, stating his belief that employer cannot be held liable for counsel's attorney's fee pursuant to Sections 28(a) or (b) of the Act, does not contain a legal basis for his conclusion and the Board, therefore, has no basis on to which review the district director's conclusion. *See Devine v. Atlantic Container Lines, GIE*, 23 BRBS 279 (1990). Consequently, as the district director's letter is not a final decision, it is not appealable under Section 21(b)(3) of the Act and we must dismiss claimant's appeal of this letter. *See generally Maria v. Del Monte/Southern Stevedore*, 22 BRBS 132 (1989) (*en banc*), *vacating on reconsideration*, 21 BRBS 16 (1988); *see generally Craven v. Director, OWCP*, 604 F.3d 902, 44 BRBS 31 (CRT) (5th Cir. 2010). Any party aggrieved by a final order of the district director may file an appeal with the Board within 30 days of the date the order is filed by the district director. 33 U.S.C. §921(a), (b); 20 C.F.R. §802.205.

Accordingly, we grant the Director's motion to dismiss claimant's appeal. The case is remanded to the district director for the entry of a formal order on claimant's counsel's petition for an attorney's fee. *Thornton v. Beltway Carpet Serv.*, 16 BRBS 29 (1983).

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge