

JOHN R. WYDRA)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: _____
)	
ATLANTIC MARINE,)	
INCORPORATED)	
(STANWICK CORPORATION))	
)	
and)	
)	
TRAVELERS INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

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

John E. Houser, Jacksonville, Florida, for claimant.

E. Robert Williams (Boyd & Jenerette, P.A.), Jacksonville, Florida, for employer/carrier.

BEFORE: DOLDER, Acting Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Compensation Order, Award of Attorney's Fees (5-39135, 6-55837) of District Director¹ 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.* (the Act). An attorney's fee award is discretionary and may only be set aside if shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See Roach v. New*

¹Pursuant to 20 C.F.R. § 702.105, the term "district director" has replaced the term "deputy commissioner" used in the statute.

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

York Protective Covering Co., 16 BRBS 114 (1984); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, a pipefitter, was awarded temporary total disability, temporary partial disability, and permanent total disability compensation and medical benefits by Administrative Law Judge Robert S. Amery in connection with back injuries he sustained while working for employer on September 7, 1980, and January 4, 1982.² Thereafter, claimant's counsel filed a fee petition requesting \$2400 representing 16 hours of services at \$150 per hour for work performed while the case was before the district director. Employer did not file any objections to claimant's fee petition.

On May 5, 1987, District Director Robilotti issued a Compensation Order, Award of Attorney's Fees, granting \$1,150.00 of the \$2,400.00 requested. In this order, the district director did not identify the hours allowed or the hourly rate used for his calculation. Claimant's motion for reconsideration of the fee award was denied. Claimant appeals the fee award, arguing that the district director erred in failing to provide a sufficient explanation for the reduction of the attorney's fees sought. Employer responds, urging that the district director's fee award be affirmed.

While the district director may award a lesser attorney's fee than that requested if an adequate explanation for the fee reduction is provided, the district director's failure to give any explanation for the fee reduction in this case renders his fee award arbitrary. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRB 280, 288 (1990) (Lawrence, J., concurring and dissenting on other grounds). In entering the \$1,150 fee award, the district director failed to indicate whether the hourly rate or number of hours were reduced, and failed to identify and provide reasons for the disallowances or reductions. *See Roach*, 16 BRBS at 115-116. Because the district director did not prove any explanation for the fee reduction, the attorney's fee award must be vacated and the case remanded to allow him to specify and explain any reduction in the hourly rate or hours sought consistent with 20 C.F.R. § 702.132. *See Devine*, 23 BRBS at 288.

²The administrative law judge's decision and order was subsequently affirmed by the Board and the United States Court of Appeals for the Eleventh Circuit. *See Wydra v. Atlantic Marine, Inc.*, BRB Nos. 86-2063 and 86-2063A (August 31, 1989)(unpublished), *aff'd*, Nos. 89-3690 and 90-4006 (11th Cir. July 29, 1991)(unpublished).

Accordingly, the Compensation Order, Award of Attorney's Fees of the district director is vacated, and the case is remanded for reconsideration of the attorney's fee award consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge