

JESSE BAKER)	
)	
Claimant-Respondent)	
)	
v.)	
)	
MORALE, WELFARE AND)	DATE ISSUED:
RECREATION, UNITED STATES)	
MARINE CORPS)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Compensation Order - Approval of Attorney Fees Application of Joyce L. Terry, District Director, United States Department of Labor.

Steven M. Birnbaum, San Francisco, California, for claimant.

James P. Aleccia, Long Beach California, for self-insured employer.

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

PER CURIAM:

Employer appeals the Compensation Order - Approval of Attorney Fees Application (OWCP No. 13-88232) of District Director Joyce L. Terry 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 Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party 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 filed a claim for compensation and medical benefits under the Act. Following an informal conference, a Memorandum of Informal Conference was issued recommending that claimant receive both total disability compensation and medical benefits. Claimant's counsel subsequently filed a fee petition for work performed before the district director, requesting \$4,521.50 for 37.5 hours of services at various hourly rates. In a Compensation Order dated September 12, 1996, the district director, after stating that employer had filed no objections to counsel's fee application, reduced the number of hours

requested by counsel and awarded a fee of \$4,420. Employer appeals the district director's fee award, asserting only that the award is "premature." Claimant responds, urging affirmance.

In the instant case, employer does not challenge the district director's statement in her Compensation Order that it did not file objections to counsel's fee application. As employer did not raise any objections before the district director, it cannot raise them now for the first time on appeal. See *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988); *Burch v. Superior Oil Co.*, 15 BRBS 423 (1983). We note, however, that the district director's issuance of a fee award in the instant case is not "premature," as it is well-established that a fact-finder may render an attorney's fee determination when she issues her decision, in order to further the goal of administrative efficiency. Any such award of an attorney's fee does not become effective and is thus not enforceable until all appeals are exhausted. *Thompson v. Potashnick Const. Co.*, 812 F.2d 574 (9th Cir. 1987); see also *Fairley v. Ingalls Shipbuilding, Inc.*, 22 BRBS 184 (1989) (*en banc*) (Brown, J., concurring), *aff'd in part and rev'd in part sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP*, 898 F.2d 1088, 23 BRBS 61 (CRT)(5th Cir. 1990); see also *Wells v. Int'l Great Lakes Shipping Co.*, 693 F.2d 663, 15 BRBS 47 (CRT)(7th Cir. 1982). We therefore reject employer's contentions on appeal and affirm the district director's fee award to claimant's counsel.

Accordingly, the district director's Compensation Order - Approval of Attorney Fees Application is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge