

BRB No. 12-0164

JUAN DIMAS)
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 Claimant-Respondent)
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 v.)
)
 CRUM SERVICES MARINE) DATE ISSUED: 11/30/2012
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 and)
)
 AMERICAN HOME ASSURANCE)
 COMPANY, c/o BROADSPIRE)
)
 Employer/Carrier-)
 Petitioners) DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees of Charles D. Lee, District Director, United States Department of Labor.

Carolyn Frank (Friedman, Rodman & Frank), Miami, Florida, for claimant.

Joanna Noriega and Frank J. Sioli (Brown Sims, P.C.), Miami, Florida, for employer/carrier.

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

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney's Fees (Case No. 06-199822) of District Director Charles D. Lee 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 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 Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant, who sustained a lower back injury while working for employer on September 4, 2006, was awarded temporary total and medical benefits by Administrative Law Judge Donald W. Mosser. On August 15, 2011, Judge Mosser issued an Attorney Fee Order approving the parties' stipulation that employer is liable for claimant's counsel's attorney's fee totaling \$65,450, plus costs of \$7,004.50, pursuant to Section 28(b) of the Act, 33 U.S.C. §928(b), for the successful prosecution of claimant's claim for benefits. District Director Charles D. Lee (the district director) filed the fee order on August 24, 2011.

After informing employer, on September 26, 2011, and again on September 30, 2011, that she had not yet received the attorney's fee awarded by Judge Mosser, claimant's counsel requested a default order from the district director. On October 11, 2011, the district director issued a Supplemental Order/Declaration of Default in which he found employer in default in the payment of the attorney's fees awarded by Judge Mosser. Claimant's counsel thereafter sought an attorney's fee for work performed before the district director from September 26 and October 7, 2011, for her pursuit of payment of the attorney's fees awarded by Judge Mosser. Specifically, claimant's counsel sought an attorney's fee in the amount of \$612.50, representing 1.75 hours of legal services at an hourly rate of \$350. Employer filed objections to the fee petition.

By Order dated November 15, 2011, the district director found that claimant's request for an attorney's fee was reasonable. He thus ordered employer to pay the requested attorney's fee in its entirety. On November 29, 2011, the district director stated, in his Memorandum of Informal Conference to address a dispute regarding medical treatment, that "I will not reconsider my position on the supplemental Attorney Fee Order. [Claimant's counsel's] efforts were timely and justified."

On appeal, employer argues that the district director abused his discretion and incorrectly applied the law in reaching the determination that claimant's counsel is entitled to an attorney's fee. Employer maintains that the delay in its payment to claimant's counsel of the attorney's fee awarded by Judge Mosser is insufficient to warrant an attorney's fee. In response, claimant asserts that the Board lacks jurisdiction to consider employer's appeal and thus review the district director's Compensation Order as that order arose pursuant to Section 18(a) of the Act, 33 U.S.C. §918(a). Alternatively, claimant maintains that the district director's fee order is in accordance with law and that, moreover, his award of an attorney's fee of \$612.50 is, under the circumstances of this case, reasonable. Employer, in its reply brief, states that the arguments contained in claimant's response should be disregarded as they are based on an incorrect application of the law, i.e., the district director's fee order does not arise under Section 18(a) of the Act, and that his award of an attorney's fee for the brief delay is an abuse of discretion.

We initially reject claimant's assertion that the Board does not have jurisdiction to address employer's appeal. In this case, the subject of employer's appeal is the district director's Compensation Order Award of Attorney's Fees issued on November 15, 2011, and not the district director's Supplemental Order/Declaration of Default. Employer's appeal thus involves review of an attorney's fee award and not a default order. We, therefore, need not address the propriety, under either Section 18(a) or 33 U.S.C. §921(d),¹ of the district director's issuance of a default order, as the default order was not appealed. *See generally Tideland Marine Service v. Patterson*, 719 F.2d 126, 16 BRBS 10(CRT) (5th Cir. 1983); *Wells v. International Great Lakes Shipping Co.*, 693 F.2d 663, 15 BRBS 47(CRT) (7th Cir. 1982). As employer's appeal is of the district director's attorney's fee award, and since the amount of an attorney's fee awarded by the district director involves a discretionary act, review of that award is properly before the Board. *See* 20 C.F.R. §802.201(a); *see also Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir. 2000), *cert. denied*, 523 U.S. 1133 (2000); *Glenn v. Tampa Ship Repair & Dry Dock*, 18 BRBS 205 (1986) (review of discretionary acts of the district director must be undertaken by the Board).

We reject employer's contention that the district director improperly "enhanced" the attorney's fee awarded by Judge Mosser. Claimant's counsel did not seek, nor did the district director award, an "enhancement" of the attorney's fee awarded by Judge Mosser to account for the delay in payment. *See, e.g., Johnson v. Director, OWCP*, 183 F.3d 1169, 33 BRBS 112(CRT) (9th Cir. 1999); *Bellmer v. Jones Oregon Stevedoring Co.*, 32 BRBS 245 (1998). Rather, as claimant's counsel's fee petition states, it is a request for a fee for "time expended securing payment ordered" in Judge Mosser's attorney's fee award. *See* Affidavit of Attorney's Time dated October 26, 2011. The record reflects that the payment of the attorney's fee was not timely paid by employer within 30 days of the district director's filing of the fee award, a fact which employer concedes. *See* Employer's Brief at 1, 4. Claimant's counsel thereafter pursued the payment of the attorney's fee through correspondence among herself, the district director, and employer's counsel. Moreover, as the district director found the time (1.75 hours) was necessary and reasonable to secure payment of the attorney's fee, and employer has not challenged the hourly rate or any of the specific entries requested by claimant's counsel and awarded by the district director, those findings are affirmed. Consequently, as employer has not shown that the district director abused his discretion in awarding claimant's counsel a fee totaling \$612.50, the fee award is affirmed. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

¹Employer notes that Section 21(d) of the Act, 33 U.S.C. §921(d), provides counsel with a method for enforcement of any attorney's fee award that has become final, but does not directly challenge the district director's default order.

Accordingly, the district director's Compensation Order Award of Attorney's Fees is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge