

NATHAN WHITE)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CERES TERMINALS,)	DATE ISSUED: <u>7/7/2000</u>
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Compensation Order - Award of Attorney's Fees of Thomas C. Hunter, District Director, United States Department of Labor.

H. Thomas Lenz (Spector & Lenz, P.C.), Chicago, Illinois, for claimant.

Gregory P. Sujack (Garofalo, Schreiber & Hart, Chartered), Chicago, Illinois, for self-insured employer.

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

PER CURIAM:

Employer appeals the Compensation Order - Award of Attorney's Fees (10-35151) of District Director Thomas C. Hunter 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 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, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant injured his left foot during the course of his employment on October 27, 1995; on November 22, 1995, claimant returned to light duty work. Both parties agree that employer began paying temporary total disability compensation to claimant from the date of injury utilizing the minimum rate then in effect; thereafter, claimant's benefits were allegedly adjusted based on the receipt of additional wage information obtained. Claimant subsequently died of an unrelated stroke in March 1997.

Claimant's counsel submitted a fee application to the district director on April 14,

1999, requesting an attorney's fee of \$2,000. On May 11, 1999, employer sent a letter to the district director requesting that a decision not be issued until it could locate claimant's file, which it asserted had been archived, determine its liability for counsel's fee, and submit any objections to the proposed fee that it may have. Without responding to employer's letter, the district director issued a Compensation Order on June 18, 1999, awarding claimant's counsel a fee of \$2000.¹

On appeal, employer challenges the fee award of the district director. Claimant responds, urging affirmance of the district director's fee award.

Employer contends that the district director's failure to allow it a reasonable time to respond to claimant's fee petition deprived employer of due process. We agree. Due process requires that a fee request be served on employer and that employer be given a reasonable time to respond. See *Todd Shipyards Corp. v. Director, OWCP*, 545 F.2d 1176, 5 BRBS 23 (9th Cir. 1976); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). In the instant case, it is undisputed that claimant's counsel's fee petition was filed on April 14, 1999, that a request for an extension of time in which to file objections was sought by employer on May 11, 1999, and that a fee was awarded by the district director on June 18, 1999. As employer in this case was not afforded a reasonable opportunity to respond to the fee request, we vacate the district director's attorney's fee award, and remand the case for the district director to reconsider the fee after allowing employer a reasonable time to file a response to counsel's fee petition.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

¹This represents 12 hours of services rendered at \$150 per hour from May 9, 1996, until May 29, 1997, and 1.25 hours at \$160 per hour rendered in 1999. Fee Petition at 2.