

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 20-0281

CONNIE CARR)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EARL INDUSTRIES, LLC)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	DATE ISSUED: 10/23/2020
ASSOCIATION, LIMITED)	
)	
Employer/Carrier)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fee of T.A. Magyar,
District Director, United States Department of Labor.

David M. Snyder (ChasenBoscolo Injury Lawyers), Greenbelt, Maryland, for
claimant.

Ann Marie Scarpino (Kate S. O'Scannlain, Solicitor of Labor; Barry H.
Joyner, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore),
Washington, D.C., for the Director, Office of Workers' Compensation
Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and GRESH, Administrative Appeals Judges.
PER CURIAM:

Claimant appeals District Director T.A. Magyar's Award of Attorney's Fee (OWCP No. 05-307950) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act). The district director's fee award must be affirmed unless it is shown by the challenging party to be arbitrary, capricious, based on an abuse of discretion, or not in accordance with applicable law. *See Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986); *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant sought benefits under the Act for injuries he sustained to his right and left wrists while working for employer on July 17, 2013. Pursuant to an agreement between the parties following the informal conference, Employer paid Claimant scheduled permanent partial disability benefits on November 22, 2019. *See* LS-208 (Nov. 22, 2019).

On January 17, 2020, Claimant's counsel submitted a petition to the district director seeking \$5,122.14 in attorney's fees for services rendered between November 6, 2017, and November 19, 2019, while the case was pending before the Office of Workers' Compensation Programs, payable by Claimant, pursuant to Section 28(c) of the Act, 33 U.S.C. §928(c).¹

The district director acknowledged Claimant's agreement to pay a fee of \$5,122.14, but nonetheless summarily awarded Claimant's counsel an attorney's fee of \$1,000, payable by Claimant.

On appeal, Claimant's counsel challenges the district director's fee award, contending she erred in failing to explain the basis for the award. Counsel requests that the Board vacate the district director's Order and approve the agreement entered into by counsel and Claimant. The Director, Office of Workers' Compensation Programs, responds, averring the case should be remanded for the district director to address the fee agreement.

¹ Claimant's counsel documented \$17,905 in services performed on Claimant's behalf, representing 29 hours of attorney time at \$440 per hour (\$12,760), and 26.25 hours of paralegal time at \$196 per hour (\$5,145). Counsel provided a signed agreement with Claimant in which Claimant agreed to pay \$5,122.14 in full satisfaction of Counsel's fee.

We agree the district director's fee award cannot be affirmed. The district director's failure to provide any rationale for rejecting the fee agreement and awarding a fee of \$1,000 renders the award arbitrary. *See, e.g., Steevens v. Umpqua River Navigation*, 35 BRBS 129 (2001); *Jensen v. Weeks Marine*, 33 BRBS 97 (1999); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). Therefore, we vacate the district director's fee award and remand the case. On remand, the district director must address the fee agreement and provide specific reasons if she does not approve it. In addition, she must provide specific reasons for any alternative fee award she enters. *See Steevens*, 35 BRBS at 136-137; *see generally Carter v. Caleb Brett, LLC*, 757 F.3d 866, 48 BRBS 21(CRT) (9th Cir. 2014); 20 C.F.R. §702.132.

Accordingly, we vacate the district director's Compensation Order Award of Attorney's Fee and remand the case for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge