JOHNNIE L. WATKINS	)	BRB No. 90-1034A
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	
	)	
Self-Insured Employer-Respondent	)	
	)	
	)	
JOHNNIE L. WATKINS	)	BRB No. 90-2229
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:_____
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeals of the Supplemental Decision and Order Awarding Attorney Fees of C. Richard Avery, Administrative Law Judge, United States Department of Labor, and the Compensation Order - Award of Attorney's Fees of N. Sandra Kitchin, District Director, Office of Workers' Compensation Programs, United States Department of Labor.

John F. Dillon and Rebecca J. Ainsworth (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

Before: SMITH and DOLDER, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

*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).

PER CURIAM:

Claimant appeals[1] the Compensation Order - Award of Attorney's Fees (OWCP No. 6-109030) of District Director N. Sandra Kitchin, and employer appeals the Supplemental Decision and Order (88-LHC-2179) of Administrative Law Judge C. Richard Avery, each awarding an attorney's fee 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 will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with the law. See Sans v. Todd Shipyards Corp., 19 BRBS 24 (1986); Muscella v. Sun Shipbuilding & Dry Dock, Inc., 12 BRBS 272 (1980).

Claimant filed a claim for a work-related hearing loss on April 8, 1987. Cl. Ex. 4. Employer filed a Notice of Controversion on April 20, 1987. Emp. Ex. 2. On June 7, 1989, a hearing was held before the administrative law judge, wherein the parties disputed the cause, nature and extent of claimant's injury. Decision and Order at 1-2. The administrative law judge found that claimant has a .63 percent binaural impairment and awarded benefits pursuant to Section 8(c)(13)(B), 33 U.S.C. §908(c)(13)(B) (1988). Decision and Order at 3.

Claimant submitted a request for an attorney's fee to both the administrative law judge and the district director. For work performed before the administrative law judge, claimant requested 13.5 hours at a rate of $125 per hour, totalling $1,687.50, plus copying costs of $20. For work performed before the district director, claimant requested $1,591.75, representing 12.25 hours at a rate of $125 per hour, including $60.50 in expenses. The administrative law judge awarded claimant's counsel 13.5 hours at a rate of $100 per hour, for an attorney's fee of $1,350 for services performed before him. He denied the request for $20 in costs, categorizing it as office overhead. Supp. Decision and Order at 2. Based on an hourly rate of $100 and on the fact that employer received formal notification of the claim from the district director on December 1, 1987, the district director ordered employer to pay $135.50, representing .75 hour of services plus costs, to claimant's counsel for work performed before her. She assessed 4.75 hours of services against claimant but reduced claimant's liability to $50 due to the size of his compensation award. Comp. Order at 2. Claimant appeals the district director's award. BRB No. 90-1034A. Employer has not responded. Employer appeals the administrative law judge's award, incorporating the

[1]Employer withdrew its appeal of the district director's fee award, BRB No. 90-1034, in a motion dated June 14, 1990. See Order of the BRB (October 23, 1990).

objections it made below, and claimant responds, urging affirmance. BRB No. 90-2229.

Employer contends that the attorney's fee of $1,350 and the hourly rate of $100 awarded by the administrative law judge are excessive given the size of claimant's compensation award and the lack of complex issues. It also contends that the attorney's fee should be limited to the difference between the additional amount awarded and the amount already paid by employer pursuant to Section 28(b) of the Act, 33 U.S.C. §928(b). We reject employer's contentions. Section 702.132 of the regulations, 20 C.F.R. §702.132, provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the issues, and the amount of benefits awarded. See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n., 22 BRBS 434 (1989); Battle v. A.J. Ellis Construction Co., 16 BRBS 329 (1984). The amount of benefits awarded is merely one factor to be considered when awarding an attorney's fee, and the Board has held that the administrative law judge need not limit the attorney's fee to the amount of compensation, because to do so would drive competent counsel from the field. Snowden v. Ingalls Shipbuilding, Inc., 25 BRBS 245 (1991) (Brown, J., dissenting on other grounds), aff'd on recon. en banc, 25 BRBS 346 (1992) (Brown, J., dissenting on other grounds); Battle, 16 BRBS at 329. In this case, the administrative law judge agreed with employer's objection that the requested hourly rate of $125 was too high in light of the lack of complex issues, but he rejected employer's contention that the hourly rate should be between $65 and $70. Supp. Decision and Order at 1. As employer has not satisfied its burden of showing that the administrative law judge abused his discretion in awarding a fee based on an hourly rate of $100, we affirm the administrative law judge's finding.[2] Snowden, 25 BRBS at 252; LeBatard v. Ingalls Shipbuilding Div., Litton Systems, Inc., 10 BRBS 317 (1979).

We also reject employer's contention concerning the quarter-hour minimum billing method used by the administrative law judge. The Board has held that use of the quarter-hour minimum billing method is not an abuse of discretion, as this method is reasonable and complies with the applicable regulation, 20 C.F.R. §702.132. Snowden, 25 BRBS at 252; Neeley v. Newport News Shipbuilding & Dry Dock Co., 19 BRBS 138 (1986).

Employer also makes specific contentions regarding time

[2]Moreover, Section 28(b) is inapplicable in this case because employer did not voluntarily pay or tender benefits to claimant. 33 U.S.C. §928(b).

allowed for the preparation and filing of discovery documents and review. Because employer has failed to show an abuse of discretion by the administrative law judge in awarding time for these services, having specifically considered employer's objections, we reject its contentions. See generally Snowden, 25 BRBS at 245; Mijangos v. Avondale Shipyards, Inc., 19 BRBS 15 (1986), rev'd on other grounds, 948 F.2d 941 (5th Cir. 1991).

Finally, employer contends that claimant's fee petition does not meet the specificity requirements of the regulations because it does not identify who performed the enumerated services. See 20 C.F.R. §702.132. Employer did not raise this objection before the administrative law judge and cannot raise it now for the first time on appeal. See Clophus v. Amoco Production Co., 21 BRBS 261 (1988); Burch v. Superior Oil Co., 15 BRBS 423 (1983). Therefore, we reject all of employer's contentions on appeal and affirm the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees.

Claimant appeals the order of the district director, contending that the district director erred in assessing all fees incurred prior to December 1, 1987 against him.[3] See Comp. Order at 2. Claimant filed his claim on April 8, 1987, and at the same time served a copy of the claim on employer. Employer filed a notice of controversion on April 20, 1987. The district director did not notify employer of the claim until December 1, 1987. Claimant contends it is unfair to assess fees against him because administrative delay by the district director prevented employer from receiving formal notice of the claim within the statutory limits, especially when employer received actual written notice from claimant eight months earlier. Claimant maintains that Section 28(a) of the Act, 33 U.S.C. §928(a), should be read in conjunction with Section 19(b) of the Act, 33 U.S.C. §919(b). Section 19(b) requires the district director to notify employer of a claim within 10 days of its filing. See also 20 C.F.R. §702.224. Under Section 28(a), if employer declines to pay compensation within 30 days after receipt of written notice of the claim from the district director, it is liable for a reasonable attorney's fee incurred thereafter by claimant in pursuit of his claim. Claimant contends, therefore, that when the district director has not notified employer of the claim within 10 days as required by Section 19(b), the 30 day period in Section 28(a) should begin to run from the date employer received actual notice of the claim. In this case, claimant maintains he should not be held liable for any portion of the attorney's fee which accrued after employer

[3]Pursuant to 20 C.F.R. §702.105, the term "district director" has been substituted for the term "deputy commissioner" used in the statute. The term "district director" will be used in this decision except when the statute is quoted.

received notice of the claim from claimant and controverted it on April 20, 1987.

When interpreting a statute, the starting point is the plain meaning of the words of the statute. Mallard v. U.S. Dist. Ct. for the Southern Dist. of Iowa, 490 U.S. 296, 109 S.Ct. 1814 (1989). Further, it is a settled principle of statutory construction that courts should give effect, if possible, to every word of the statute. Connecticut Dep't of Income Maintenance v. Heckler, 471 U.S. 524, 530 n. 15, 105 S.Ct. 2210, 2213 n. 15 (1985); Bowsher v. Merck & Co., 460 U.S. 824, 833, 103 S.Ct. 1587, 1593 (1983); Mastro Plastics Corp. v. National Labor Relations Board, 350 U.S. 270, 298, 76 S.Ct. 349, 366 (1956). In this case, we are asked to interpret Section 28(a) of the Act.

Section 28(a) provides:

> If the employer or carrier declines to pay any compensation on or before the thirtieth day after receiving written notice of a claim for compensation having been filed from the deputy commissioner . . . and the person seeking benefits shall thereafter have utilized the services of an attorney at law in the successful prosecution of his claim, there shall be awarded, in addition to the award of compensation, . . . a reasonable attorney's fee against the employer or carrier in an amount approved by the deputy commissioner . . . which shall be paid directly by the employer or carrier to the attorney . . . .

33 U.S.C. §928(a) (emphasis added). The Board has consistently held that this section limits an employer's liability to those fees incurred after 30 days from the date it received written notice or, within the 30 day period, from the date it declined to pay, whichever comes first. See, e.g., Martin v. Kaiser Co., Inc., 24 BRBS 112, 126 (1990) (Dolder, J., concurring in result only); see also Kemp v. Newport News Shipbuilding & Dry Dock Co., 805 F.2d 1152, 1152-1153, 19 BRBS 50, 52 (CRT) (4th Cir. 1986); Luter v. Newport News Shipbuilding & Dry Dock Co., 19 BRBS 103 (1986); Baker v. Todd Shipyards Corp., 12 BRBS 309 (1980) (Miller, J., dissenting in part); Lonergan v. Ira S. Bushey & Sons, Inc., 11 BRBS 345 (1979) (Miller, J., dissenting in part); Jones v. C&P Telephone Co., 11 BRBS 7 (1979) (Miller, J., dissenting), aff'd mem., No. 79-1458 (D.C. Cir. February 26, 1980), amended, (D.C. Cir. March 31, 1980). However, cases subsequent to Jones, 11 BRBS 7, have not emphasized the source of the notice to the employer. We now must determine whether Section 28(a) requires the notice to be from the district director, or whether written notice of the claim provided to employer by claimant can satisfy the provisions of Section 28(a) in the absence of timely statutory notification from the district director.

In order to give effect to every word of Section 28(a), we hold that only written notice of the claim from the district

director triggers employer's liability for an attorney's fee under Section 28(a). In Jones, a Board majority strictly interpreted Section 28(a) and held that it does not authorize a claimant to hire an attorney, at the employer's expense, until after the employer receives notice of the claim from the district director and declines to pay. Prior to that time, the claimant may be liable for fees incurred. Jones, 11 BRBS at 14-15; 33 U.S.C. §928(c). The plain language of Section 28(a) holds an employer liable for an attorney's fee if it declines to pay compensation "on or before the thirtieth day after receiving written notice of a claim for compensation having been filed from the deputy commissioner. . . ." 33 U.S.C. §928(a). The language of this section is unambiguous, and the district director's duty enumerated therein correlates to the responsibility prescribed in Section 19(b) of the Act. Section 19(b) provides:

> Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the Secretary, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon employer or other person, or sent to such employer or person by registered mail.

33 U.S.C. §919(b) (emphasis added); see also Jones, 11 BRBS at 13; 20 C.F.R. §702.224. If we were to hold that written notice from claimant to employer triggers the 30-day period in Section 28(a), we would render meaningless the phrase "from the deputy commissioner" in that section. We decline to do so.[4]

Only when the plain language of the Act is inconsistent with the policy of the legislation may the purpose, as opposed to the literal words, be followed. See Ingalls Shipbuilding, Inc. v. Director, OWCP, 898 F.2d 1088, 23 BRBS 61 (CRT) (5th Cir. 1990). Section 28(a) definitively specifies that notice to employer must come "from the deputy commissioner." As the terms of Section

[4]We note that the Act imposes a duty on the district director to notify the employer of claims against it within 10 days of their filing. 33 U.S.C. §919(b). There is, however, no provision in the Act which specifies the consequences or effects of a delay by the district director's office. As "formal" proceedings may not commence without the knowledge and supervision of the district director's office, see generally Jones, 11 BRBS at 15; 20 C.F.R. §§702.311-702.319, 702.224, we conclude that the provision in Section 28(a) requiring notice to be from the district director is consistent with the legislative intent that employer is not to be liable for an attorney's fee at the early, informal stages of the proceedings. See Jones, 11 BRBS at 15.

28(a) are unambiguous and are consistent with the purpose of the Act as expressed in the legislative history of the 1972 Amendments, see Jones, 11 BRBS at 12-13, 15, we need not look further than the plain language of Section 28(a) to interpret its meaning. Mallard, 490 U.S. 296, 109 S.Ct. 1814; Amgen, Inc. v. U.S. International Trade Comm'n, 902 F.2d 1532 (Fed. Cir. 1990). Therefore, giving full effect to every word of Section 28(a), we hold that an employer is liable for an attorney's fee under Section 28(a) for those services rendered to claimant after 30 days from the date employer received written notice of the claim from the district director or, within the 30 day period, from the date it declined to pay, whichever comes first. Jones, 11 BRBS at 14.

Based on the plain language of Section 28(a), we reject claimant's contention that employer may be held liable for an attorney's fee for services performed prior to its receipt of the formal notice of the claim from the district director.[5] Therefore, we affirm the district director's Compensation Order assessing against employer only that portion of the attorney's fee incurred after December 1, 1987.[6]

[5]We recognize that our holding may burden claimants who require legal advice or services to commence an action. However, Section 39(c)(1) of the Act, 33 U.S.C. §939(c)(1), requires the Secretary, upon request, to provide claimants with information and assistance in processing a claim. See Kemp, 805 F.2d at 1153, 19 BRBS at 52-53 (CRT); Jones, 11 BRBS at 15-16.

[6]We note that, in this instance, the district director reduced claimant's liability for an attorney's fee from $475 to $50 in light of the size of his compensation recovery. Comp. Order at 2. Such a reduction is discretionary, as the regulations require that the district director consider claimant's ability to pay if a fee is assessed against him, see 20 C.F.R. §702.132(a), and has not been challenged on appeal.

Accordingly, the Supplemental Decision and Order of the administrative law judge and the Compensation Order of the district director are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge