

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4367
Summary Calendar

JOHNNIE L. WATKINS,
Petitioner,

v.

INGALLS SHIPBUILDING, INC., and
DIRECTOR, OFFICE OF WORKERS COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR,

Respondents.

Petition for Review of an Order of the
Benefits Review Board
(90-2229)

(December 9, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

EDITH H. JONES, Circuit Judge:

Surely the claimant's attorney was thinking of something other than the good of her client in pursuing this appeal from a BRB award of attorneys' fees of \$135.50. At most, the claimant stood to gain an additional \$475.00 assessment of attorneys fees against the employer. Both claimant's and the employer's counsel

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

undoubtedly expended much more on the briefs now before us. In monetary terms, then, pursuing this appeal was ridiculous.

Further, claimant's position has no legal foundation, even though it raises an issue with possible equitable appeal. Claimant argues that the additional amount of attorneys' fees should have been awarded against the employer even though they were incurred by claimant before the employer received written notice of a claim for compensation from the deputy commissioner. The statute precludes such an award:

If the employer or carrier declines to pay any compensation on or before the thirtieth (30th) day after receiving written notice of a claim for compensation having been filed from the deputy commissioner . . . and the person seeking the 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 . . .

33 U.S.C. § 928(a) (emphasis added). Claimant contends that the result mandated by the statute is in his case unfair, because the district director delayed sending notice of his claim to the employer for eight months after the employer learned of the claim; during this interval his attorney performed four hours of now-unreimbursed work. The BRB, however, properly applied the law as it is written in denying compensation for attorneys' fees that were incurred before the formal notice of claim was filed upon the employer by the district director. Like the BRB, this court has no power to rewrite the statute.

This appeal is frivolous and is therefore **DISMISSED**.

