

REX L. HEAD)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees and the Order Granting Motion for Reconsideration of Supplemental Decision and Order Awarding Attorney Fees of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

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

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees and the Order Granting Motion for Reconsideration of Supplemental Decision and Order Awarding Attorney Fees (89-LHC-2836) of Administrative Law Judge Richard D. Mills 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 be set aside only if the challenging party shows it 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's counsel sought an attorney's fee of \$1,950.75, representing 15.5 hours at \$125 per hour plus \$13.25 in expenses, for work performed before the administrative law judge in connection with claimant's hearing loss claim. The administrative law judge considered employer's specific objections to the fee request, reduced the number of hours sought to 10, and approved an hourly rate of \$110 and \$13.25 in costs. Because the administrative law judge determined that \$450 had already

been paid in attorney's fees to claimant's counsel, the administrative law judge awarded claimant's counsel an attorney's fee of \$650 plus \$13.25 in costs. In a subsequent Order Granting Motion for Reconsideration, the administrative law judge agreed with claimant's counsel that the \$450 deducted from the total amount of fees awarded was for an attorney's fee award at the district director level and, thus, should not be deducted from the amount awarded for work performed at the administrative law judge's level. Accordingly, the administrative law judge amended the fee award to reflect employer's liability for an attorney's fee of \$1,100, plus the requested expenses of \$13.25.

On appeal, employer challenges the administrative law judge's fee award, incorporating by reference the objections it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer initially contends that the administrative law judge erred in holding it liable for claimant's attorney's fee, arguing that there was no successful prosecution of the claim. We disagree. Employer did voluntarily commence payment of benefits to claimant for a 9.06 percent binaural hearing impairment prior to the transfer of the case to the administrative law judge, thereby precluding employer's liability under Section 28(a) of the Act, 33 U.S.C. §928(a). Employer, however, is liable for claimant's attorney's fees pursuant to Section 28(b), 33 U.S.C. §928(b), since after referral but prior to a hearing employer accepted liability for a 12.83 percent binaural hearing impairment. Thus, inasmuch as a controversy remained after employer voluntarily paid some benefits and claimant was successful in obtaining additional benefits over those which employer initially paid, we affirm the administrative law judge's finding that claimant's attorney is entitled to a fee award to be assessed against employer. *See generally Rihner v. Boland Marine & Manufacturing Co.*, 24 BRBS 84 (1990) *aff'd*, 41 F.3d 997, 29 BRBS 43 (CRT)(5th Cir. 1995); 33 U.S.C. §928(b).

Employer's objections to the number of hours and hourly rate awarded are rejected, as it has not shown that the administrative law judge abused his discretion in this regard. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour also is rejected, as the administrative law judge specifically considered this objection and his award conforms to the criteria set forth in the decisions of the United States Court of Appeals for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990)(unpublished) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table).

Employer's contentions which were not raised below will not be addressed for the first time on appeal. *See Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993)(*en banc*)(Brown and McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees and the Order Granting Motion for Reconsideration of Supplemental Decision and Order Awarding Attorney Fees are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge