

BRB Nos. 93-181
and 93-1189

STANLEY J. LePRE)
)
 Claimant-Respondent)
)
 v.) DATE ISSUED: _____
)
 INGALLS SHIPBUILDING,)
 INCORPORATED)
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeals of the Supplemental Decision and Order Awarding Attorney Fees of Quentin P. McColgin, Administrative Law Judge, United States Department of Labor, and the Compensation Order-Award of Attorney's Fees of N. Sandra Ramsey, District Director, United States Department of Labor.

Rebecca J. Ainsworth (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 (89-LHC-819) of Administrative Law Judge Quentin P. McColgin and the Compensation Order-Award of Attorney's Fees (6-103053) of District Director N. Sandra Ramsey rendered on a claim filed pursuant to the provisions of the Longshore Harbor and Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act).¹ The amount of 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 law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

¹By Order dated May 13, 1993, the Board consolidated employer's appeal of the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees, BRB No. 93-181, with employer's appeal of the district director's Compensation Order-Award of Attorney's Fees, BRB No. 93-1189.

Claimant's counsel sought an attorney's fee of \$3,094.25 for work performed before the administrative law judge in connection with claimant's hearing loss claim, representing 24.25 hours at \$125 per hour, plus \$63 in expenses. The administrative law judge awarded counsel a fee of \$1,412.50, representing 14.125 hours at an hourly rate of \$100, plus expenses of \$63. Claimant's counsel also sought an attorney's fee of \$884.25, representing 8.75 hours of services at \$100 per hour, plus expenses of \$9.25, for work performed before the district director. The district director awarded claimant's counsel a fee \$300 to be paid by employer, representing 3 hours for services rendered after June 23, 1987, at an hourly rate of \$100, plus expenses of \$9.25.²

Employer appeals both the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees, BRB No. 93-0181, and the district director's Compensation Order-Award of Attorney's Fees, BRB No. 93-1189, incorporating by reference the arguments it made below into its appellate briefs. Claimant responds, urging affirmance of the administrative law judge's fee award, but has not responded to employer's appeal of the district director's fee award.

Initially, we reject employer's contention that the administrative law judge and the district director erred in holding it liable for claimant's attorney's fee because there was no successful prosecution of the claim. In this case, employer controverted causation, and claimant ultimately prevailed before the Board in establishing the existence of a work-related hearing loss and his entitlement to an award of future medical benefits. *LePre v. Ingalls Shipbuilding, Inc.*, BRB No. 91-588 (May 29, 1992)(unpublished). As claimant's counsel successfully prosecuted his claim for medical benefits, the administrative law judge's finding that claimant's attorney is entitled to a fee to be assessed against employer pursuant to Section 28(a) of the Act, 33 U.S.C. §928(a), is affirmed. *See Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993); *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

Employer's objections to the number of hours and hourly rate awarded are also rejected, as it has not shown that the administrative law judge abused his discretion or that the district director abused her 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 also objects to counsel's method of billing in minimum increments of one-quarter hour. The fee awarded by the administrative law judge, however, is consistent with 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) (unpublished). With regard to the fee award made by the district director, however, consistent with *Biggs* and *Fairley*, we reduce the following

²Although the district director properly determined that the charges incurred prior to June 23, 1987, when employer received notice of the claim, were chargeable to claimant as a lien upon his compensation award, she acted within her discretion in declining to assess this portion of the fee against claimant in view of his minimal recovery. *See* 33 U.S.C. §928(a), (c); 20 C.F.R. §702.132(a); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993).

entries from one-quarter hour to one-eighth hour each: June 24, 1987, May 2, 1988, and December 2, 1988.

Employer's contentions which were not raised below will not be addressed for the first time on appeal. *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 Supplemental Decision and Order Awarding Attorney Fees of the administrative law judge is affirmed. BRB No. 93-0181. The Compensation Order-Award of Attorney's Fees of the district director is modified as stated herein, and is otherwise affirmed. BRB No. 93-1189.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge