

BRB No. 93-2120

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

Appeal of the Decision and Order on Remand Awarding Attorney Fees of Richard D. Mills,
Administrative Law Judge, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof, P.C.), Mobile, Alabama, for claimant.

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

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

PER CURIAM:

Employer appeals the Decision and Order on Remand Awarding Attorney Fees (89-LHC-441) 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 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).

This case is on appeal to the Board for the second time. In the original Decision and Order, Administrative Law Judge Walley approved a Section (8)(i) settlement agreement under which employer was to pay claimant \$3,781.17 for a 9.37 percent binaural impairment. Claimant's counsel filed a fee petition, requesting \$3,104.30, representing 20.45 hours at a rate of \$150 per hour, and \$36.80 in expenses in conjunction with claimant's claim. The administrative law judge disallowed 7.45 of the requested hours, reduced the requested hourly rate to \$100, and awarded a total fee of \$1,300, representing 13 hours at a rate of \$100 per hour. On appeal, the Board vacated the fee award

and remanded the case to the administrative law judge to provide an adequate rationale for the reduction in the number of hours and hourly rate. The Board also held that the administrative law judge erred in apparently denying a fee for services performed after March 14, 1989, the date employer submitted a settlement offer to claimant, as the tender to claimant on that date was not made in writing as required by Section 28(b), 33 U.S.C. §928(b). *Carroll v. Ingalls Shipbuilding, Inc.*, BRB Nos. 89-1770/A (Oct. 28, 1992)(unpublished).

In a Decision and Order on Remand Awarding Attorney Fees, after considering employer's objections, Administrative Law Judge Mills awarded counsel a fee of \$1,212.50, representing 9.7 hours at a rate of \$125 per hour for services performed before the administrative law judge.

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

Initially, we reject employer's contention that it is not liable for 1.5 hours of work performed after March 20, 1989, the date that the settlement agreement was reduced to writing. The administrative law judge did not err in awarding a fee for services through March 23, 1989, as counsel is entitled to a fee for reasonable wrap-up services relating to the implementation of the settlement. *See generally Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995).

Employer objects to counsel's method of billing in minimum increments of one-quarter hour. Consistent with the decisions of the United States Court of Appeals of 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. 1991) (table), we reduce the following entry from one-quarter to one-eighth hour: the receipt and review of a letter on November 3, 1988. The remaining entries conform to the criteria set forth by the Fifth Circuit in *Fairley* and *Biggs*. After considering employer's remaining objections to the number of hours awarded, and to the hourly rate, we reject these contentions, as it has not shown that the administrative law judge abused his discretion in this regard. *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 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, administrative law judge's Decision and Order on Remand is modified as stated herein, and is otherwise affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge