

WILLIAM C. McDONALD) BRB No. 93-2181
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 Claimant-Petitioner)
)
 v.)
)
 INGALLS SHIPBUILDING,)
 INCORPORATED)
)
 Self-Insured)
 Employer-Respondent)
)

WILLIAM C. McDONALD) BRB No. 93-2490
)
 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 A.A. Simpson, Jr., 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.

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

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

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

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (92-LHC-2197) of Administrative Law Judge A.A. Simpson, Jr., and employer appeals the Compensation Order Award of Attorney's Fees (Case No. 6-109782) of District Director N. Sandra Ramsey, 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).¹ 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 Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$1,415, representing 9.25 hours at \$150 per hour by lead counsel and .25 hours at \$110 per hour by associate counsel, for work performed before the administrative law judge in connection with claimant's hearing loss claim. The administrative law judge awarded counsel a fee of \$643.75, representing 5.625 hours at an hourly rate of \$110 and one-quarter hour at an hourly rate of \$100. Claimant's counsel also filed a fee petition for work performed before the district director in which he requested an attorney's fee of \$787.50, representing 5.25 hours of legal services performed at an hourly rate of \$150. The district director awarded claimant's counsel a fee of \$577.50 representing 5.25 hours at an hourly rate of \$110.

On appeal, claimant challenges the fee awarded by the administrative law judge in his Supplemental Decision and Order Awarding Attorney Fees. Employer responds, urging affirmance. BRB No. 93-2181. Employer appeals the attorney's fee awarded by the district director, incorporating the objections it made below into its appellate brief. Claimant responds, urging affirmance. BRB No. 93-2490.

We first address claimant's appeal of the administrative law judge's award of an attorney's fee. BRB No. 93-2181. Initially, claimant challenges the reductions made by the administrative law judge in the hourly rates sought. Specifically, claimant asserts that the administrative law judge erred in reducing the hourly rate sought by claimant's lead counsel to \$110, since the facts and legal issues in the instant case were unique and complex, and the rate awarded is not commensurate with counsel's qualifications. We disagree. The complexity of legal issues is but one factor to be considered when awarding an attorney's fee. *See* 20 C.F.R. §702.132; *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). In the instant case, the administrative law judge specifically considered the complexity of the legal issues, as well as claimant's lead counsel's qualifications, in finding that an hourly rate of \$110 was commensurate with the services performed. Inasmuch as claimant's assertions that counsel's qualifications require a higher hourly rate are

¹By Order dated November 8, 1993, the Board consolidated for purposes of decision claimant's appeal of the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees, BRB No. 93-2181, and employer's appeal of the district director's Compensation Order Award of Attorney's Fees, BRB No. 93-2490. 20 C.F.R. §802.104.

insufficient to meet his burden of proving the hourly rate awarded by the administrative law judge is unreasonable, we affirm the rate awarded by the administrative law judge.² See *Ferguson v. Southern States Cooperative*, 27 BRBS 16 (1993); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993).

Claimant next contends that the administrative law judge erred in reducing the hours requested in his fee petition. Specifically, claimant contends that the number of hours requested was not excessive, and that billing for review of the case file should be appropriately compensable. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done, the complexities of the legal issues involved, and the amount of benefits awarded. See generally *Parrott v. Seattle Joint Port Labor Relations Committee of the Maritime Ass'n*, 22 BRBS 434 (1989). In his Supplemental Decision and Order, the administrative law judge reduced the time sought for review of pleadings, preparation of discovery, and conferences, as well as time sought for review of the case file. In each instance, the administrative law judge set forth the rationale upon which he relied in reducing the hours sought by counsel. Thus, we hold that claimant's assertions on appeal are insufficient to meet his burden of proving that the administrative law judge abused his discretion in reducing the number of hours requested in the fee petition. See *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Lastly, claimant asserts that the administrative law judge erred in following the decision 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 thus rejecting counsel's method of quarter-hour billing. In *Fairley*, the Fifth Circuit stated that, generally, attorneys should charge no more than one-quarter of an hour for preparation of a one-page letter, and one-eighth of an hour for review of a one-page letter. The Fifth Circuit has held that its unpublished fee order in *Fairley* is considered circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table). Accordingly, the administrative law judge's reductions in time sought by counsel pursuant to *Fairley* are affirmed.

In its appeal, employer challenges the attorney fee awarded by the district director. BRB No. 93-2490. Employer initially argues that the lack of complexity of the instant case mandates a reduction in the amount of the fee awarded by the district director to claimant's counsel. We disagree. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved, and the amount of benefits awarded. See generally *Parrott*, 22 BRBS at 434.

²We reject claimant's reliance on fee awards issued by the administrative law judge in other cases. The amount of an attorney's fee award lies within the discretion of the body awarding the fee, and the decision of an administrative law judge regarding the amount of a fee in one case is not binding precedent on another body, or the same administrative law judge, in a different case. 33 U.S.C. §928(c); *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, *modifying in part on recon.* 28 BRBS 27 (1994).

In the instant case, the district director considered this objection in reducing counsel's hourly rate from \$150 to \$110. We therefore reject employer's contention that the awarded fee must be further reduced on this basis.

After considering employer's objections to the number of hours and the hourly rate awarded, we reject these contentions, as it has not shown that the district director abused her discretion in this regard. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

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)(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, BRB No. 93-2490, the district director's Compensation Order Award of Attorney's Fees, BRB No. 93-2181, are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge