

CLARENCE HOUSLEY	)	
	)	
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 of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

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-1241) 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).<sup>1</sup> 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 \$3,585.50, representing 28 hours of legal services performed at an hourly rate of \$125, and \$83.50 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 hours sought by counsel to 18, reduced the requested hourly rate to \$110, approved counsel's requested \$83.50 in

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<sup>1</sup>Although employer's appeal in this case was filed on July 10, 1992, that appeal was not forwarded to and received by the Board until May 6, 1996. The Board thus considers May 6, 1996 to be the relevant date for this appeal with regard to the one-year period referenced in Public Law No. 104-134.

expenses, and thereafter awarded claimant's counsel an attorney's fee of \$2,063.50. Employer appeals the administrative law judge's award, incorporating the objections it made below into its appellate brief. Claimant has not filed a response brief in the instant matter.

Employer contends that the fee awarded is excessive, maintaining that the instant case was routine, uncontested, and not complex. The administrative law judge considered the routine and uncomplicated nature of the instant case in reducing counsel's requested hourly rate from \$125 to \$110. Moreover, contrary to employer's contention, this was not an uncontested case as employer controverted the issues of causation and the extent of claimant's hearing loss, as well as the issue of Section 14(e) penalties before the administrative law judge. We, therefore, reject employer's contention that the awarded fee must be further reduced based on these criteria because employer has not satisfied its burden of showing that the administrative law judge abused his discretion in awarding a fee based on an hourly rate of \$110. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *see generally Snowden v. Ingalls Shipbuilding, Inc.*, 25 BRBS 245 (1991)(Brown, J., dissenting on other grounds), *aff'd on recon. en banc*, 25 BRBS 346 (1992)(Brown, J., dissenting on other grounds).

We next reject employer's objections to the number of hours awarded by the administrative law judge, as it has not been shown that the administrative law judge abused his discretion in this regard. *See Ross*, 29 BRBS at 42; *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's 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).

Lastly, 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.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge