

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

Appeal of the Compensation Order-Award of Attorney's Fee of N. Sandra Ramsey, District Director, United States Department of Labor.

Jerry L. Hutcherson, 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 Compensation Order-Award of Attorney's Fee (Case No. 6-122504) 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). 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 and Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for compensation under the Act, and was successful in obtaining medical benefits for her hearing loss. Claimant's counsel filed a fee petition, requesting 7.1 hours for services rendered before the district director, at a rate of \$115 per hour. Employer filed objections to the fee petition. In a Compensation Order - Award of Attorney's Fee dated July 30, 1992, the district director, after considering employer's objections, awarded counsel a fee of \$625 for 6.25 hours at a rate of \$100 per hour, payable by employer.

Employer appeals the district director's attorney's fee award, incorporating the objections it made below into its appellate brief. Claimant has not responded to employer's appeal.

On appeal, employer initially contends that the district director erred in holding it liable for claimant's attorney's fee, arguing that, as claimant received no compensation, there was no successful prosecution of the claim. We reject employer's argument that it is not liable for an attorney's fee; claimant's award of medical expenses constitutes additional compensation sufficient to support a fee award payable by employer under Section 28(b), 33 U.S.C. §928(b). *See Allen v. Ingalls Shipbuilding, Inc.*, BRB No. 92-2184 (Aug. 18, 1995) (unpublished); *see also Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61, 64 (1991)(decision on remand); *Powers v. General Dynamics Corp.*, 20 BRBS 119 (1987).

Employer further contends that the fee award is excessive in view of the fact that this was a routine hearing loss claim involving undetailed form pleadings. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, Section 702.132, 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 v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). In entering her fee award, the district director specifically took the regulatory criteria into account in reducing counsel's requested hourly rate from \$115 to \$100. *See Order at 1.* We therefore reject employer's contention that the fee should be further reduced on this basis. Moreover, employer has not established that the district director abused her discretion in awarding an hourly rate of \$100, and we accordingly affirm the hourly rate awarded.¹ *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer also contends that the time spent in preparing and reviewing various correspondence and legal documents was either unnecessary, excessive, or clerical in nature.² After evaluating claimant's fee request in light of the regulatory criteria of 20 C.F.R. §702.132 and employer's objections, the district director reduced the number of hours claimed from 7.10 to 6.25 hours, finding the remaining hours and services claimed to be reasonable. We decline to disturb this rational determination. *See Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

¹We also reject employer's reliance on the decision of Judge A.A. Simpson in *Cox v. Ingalls Shipbuilding, Inc.*, 88-LHC-3335 (Sept. 5, 1991). The decision of an administrative law judge in a different case is not binding upon the district director or the Board in this case. 33 U.S.C. §928(c); 20 C.F.R. §702.132.

²Employer also contends on appeal that the district director erred in holding it liable for a fee for services performed prior to June 8, 1989, the date employer received formal notice of the claim from the district director. Additionally, employer objects on appeal to counsel's minimum quarter-hour billing method. We decline to address these contentions as employer did not raise these arguments before the district director and is not permitted to raise them now for the first time on appeal. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *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 in part, part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995).

Accordingly, the district director's Compensation Order - Award of Attorney's Fee is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge