

GARY JENKINS, JR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
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.

Rebecca J. Ainsworth (Maples and Lomax, P.A.), Pascagoula, Mississippi, 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 Compensation Order Award of Attorney's Fee (6-103061) 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. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for compensation under the Act, and was successful in obtaining benefits for his hearing loss. Claimant's counsel filed a Petition for Approval of Attorney's Fee, requesting 9.875 hours for services rendered before the district director, at a rate of \$100 per hour, plus \$12 in expenses. Employer filed objections to the fee petition. The district director issued an Order awarding counsel a fee for 9.875 hours of services at \$100 per hour, for a total fee of \$987.50.¹ Finding, however, that employer is not liable for any charges prior to its receipt of formal notice of the claim on June 10, 1987, the district director ordered employer to pay \$750 to counsel and ordered a lien on claimant's compensation in the remaining amount of \$237.50. Employer

¹The district director did not award claimant's counsel the requested \$12 in expenses.

appeals the district director's attorney's fee award, incorporating the objections it made below into its appellate brief. Claimant responds, urging affirmance.

On appeal, employer initially 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 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 determining that counsel's requested hourly rate of \$100 is reasonable and appropriate. *See Order at 1*. We therefore reject employer's contention that the fee should be 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. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer also contends that the awarded fee is excessive because the award of benefits is "nominal." Employer did not raise this contention below, and may not raise it 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 pertinent part 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).

Employer additionally challenges the number of hours requested by claimant's counsel and approved by the district director. In this regard, employer contends that the time spent in certain discovery-related activities and in reviewing and preparing various legal documents was either unnecessary or excessive. In considering counsel's fee petition, the district director noted employer's objections, and determined that the time requested by claimant's counsel for services rendered was both reasonable and necessary. Because employer has failed to show an abuse of discretion by the district director in awarding time for these services, having considered employer's objections, we reject these item-specific contentions and decline to reduce the district director's award. *See generally Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993); *Mijangos v. Avondale Shipyards, Inc.*, 19 BRBS 15 (1986), *rev'd on other grounds*, 948 F.2d 941, 25 BRBS 78 (CRT)(5th Cir. 1991).

Employer also objects to counsel's use of the quarter-hour minimum billing method. In *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 90-4559 (5th Cir. July 25, 1990)(unpublished), the United States Court of Appeals for the Fifth Circuit stated that attorneys, generally, may not bill more than one-eighth hour for review of a one-page letter and one-quarter hour for preparation of a one-page letter. The Fifth Circuit subsequently stated in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(unpublished), that its fee order in *Fairley* is considered to be circuit precedent. The district director did not separately discuss this objection which employer raised before her. We, therefore, must vacate the district director's fee award and remand the case for consideration of counsel's fee petition in light of employer's

objections and circuit precedent. *See generally Ross*, 29 BRBS at 42. Lastly, we reject employer's contention that the time claimed after the case was referred to the administrative law judge should be disallowed. As these services relate to the oversight of medical care and to the "wrap-up" of the claim, the district director did not abuse her discretion in awarding fees for these services. *See generally Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

Accordingly, the Compensation Order Award of Attorney's Fee of the district director is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this decision.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge