

CHARLES L. BEECH)	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED:_____
INGALLS SHIPBUILDING,)	
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.

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

Traci M. Castille (Franke, Rainey & Salloum, PLLC), 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 (93-LHC-3206) 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 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 \$2,152.50, representing 10.50 hours at \$150 per hour, and 5.25 hours at \$110 per hour, 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 \$1,678.75, representing 9.25 hours at an hourly rate of \$125, and 4.75 hours at an hourly rate of \$110. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Incorporating his response to employer's objections below, claimant responds, urging affirmance of the fee award.

Employer's objections to the number of hours and hourly rates awarded are rejected, as it has not shown that the administrative law judge abused his discretion in this regard.¹ *See Ross v. Ingalls*

¹Although employer objected to the September 23, 1983, October 5, 1993, and October 18, 1993,

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 assertion that the time claimed after September 2, 1994, should be denied because on that date employer fully paid claimant the disability compensation agreed upon by the parties in their respective summary judgment motions,² and claimant's efforts thereafter to obtain an assessment under Section 14(e), 33 U.S.C. §914(e), and additional interest were unsuccessful, is rejected. As the services counsel provided after September 2, 1994 can reasonably be viewed as necessary to wind-up the case, we affirm the administrative law judge's allowance of these entries. See *Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995). Moreover, while employer correctly asserts that any fee awarded must be tailored to the degree of success obtained, the administrative law judge specifically stated that he had considered which amounts charged were excessive and whether the amounts were necessary in achieving the highest amount of compensation that claimant was entitled to receive in allowing the contested post-September 2, 1994, entries. Employer has thus failed to meet its burden of establishing that the administrative law judge abused his discretion in this regard.

Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour is also rejected, as the administrative law judge considered this objection, and his 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). Similarly, we reject employer's assertion that the fee awarded by the administrative law judge is excessive in light of the routine and uncomplicated nature of the case, inasmuch as the administrative law judge specifically considered the lack of complexity of the case in determining both the applicable hourly rate and the overall reasonableness of the entries claimed. See generally *Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989).

Employer's assertion that the hours claimed by counsel were excessive and unnecessary in light of the *de minimis* or nominal value of the claim is also rejected.³ In making the fee award in

entries below on the ground that they lacked the specificity required by the regulation, the administrative law judge did not abuse his discretion by awarding a fee for these entries. Although employer also argued that no fee should be awarded for the March 7, 1994, entry, because it dealt only with review of employer's correspondence requesting remand for consideration of entitlement to 33 U.S.C. §908(f) relief, the administrative law judge acted within his discretion in allowing .5 hours of the 1 hour claimed for this entry on the rationale that the time claimed had also been spent in preparing claimant's objection to remand which did not address the merits of Section 8(f) entitlement but contested employer's attempt to delay the hearing.

²The parties agreed claimant was entitled to payment for an 11.25 percent monaural hearing loss based on an average weekly wage of \$424.39 and interest.

³Although employer cites *Cuevas v. Ingalls Shipbuilding, Inc.*, BRB No. 90-1451 (Sept. 27, 1991)(unpublished), in support of its assertion that the fee awarded is excessive, the Board has held

this case, the administrative law judge considered this objection, and his finding that counsel's fee is not limited to the amount of compensation obtained accords with law. *See, e.g., Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993). As discussed previously in addressing employer's objections regarding the amount of the award, the administrative law judge considered the necessity of the amounts claimed in relation to the award, and he thereafter reduced the number of hours sought by 1.75. In this case, moreover, since employer did not pay any benefits voluntarily or enter into any stipulations until more than one year after the case was referred to the administrative law judge, claimant's counsel's efforts before the administrative law judge resulted in claimant's obtaining \$1,655.14 in disability compensation for an 11.25 percent monaural hearing loss, interest, and past and future medical benefits. Inasmuch as the administrative law judge considered the issue of the amount of benefits awarded in relation to the fee requested in evaluating the fee petition, we reject employer's assertion that the awarded fee should be further reduced on this basis. *See generally Rogers v. Ingalls Shipbuilding, Inc.*, 28 BRBS 89, 93 (1993)(Brown, J., dissenting).

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).

that unpublished cases should not be cited or relied on by the parties as they lack precedential value. *See Lopez v. Southern Stevedores*, 23 BRBS 295, 300 n.2 (1990). In addition, the Board's decision in *Cuevas* was based on the facts of that case and has no bearing on the fee award herein. *See Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230, 236-237 (1993).

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