

BRB No. 89-1870A

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

Appeal of the Supplemental Decision and Order Awarding Attorney's Fees of Ben H. Walley, 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's Fees (88-LHC-3747) of Administrative Law Judge Ben H. Walley 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 contrary to law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock, Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$1,058.50, representing 7 hours at \$150 per hour, and \$8.50 in expenses, 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 \$708.50, representing 7 hours at an hourly rate of \$100, and \$8.50 in expenses. Employer appeals the administrative law judge's award, incorporating by reference the arguments it made below into its appellate brief. Claimant has not filed a response brief in the instant matter.

Employer initially objects to counsel's method of billing in minimum increments of one-quarter hour. The United States Court of Appeals for the Fifth Circuit has held that its unpublished fee order in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25,

1990), is considered circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table). In *Fairley*, the court held that attorneys, generally, may not charge more than one-eighth hour for reading a one-page letter and one-quarter hour for preparing a one-page letter. See *Fairley*, slip op. at 2. The one-half hour entry on November 11, 1988, is excessive under this criteria; we therefore reduce this entry to one-quarter of an hour.

After considering employer's remaining objections to the number of hours awarded, and to the hourly rate, we reject these contentions, as it has not shown that the administrative law judge abused his discretion in this regard. See *Ross v. Ingalls 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 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's Fees of the administrative law judge is modified to reflect the reduction of one one-half hour entry to one-quarter of an hour. Counsel is therefore entitled to a fee of \$675, representing 6.75 hours of services rendered at \$100 per hour, and \$8.50 in expenses. In all other respects, the Supplemental Decision and Order Awarding Attorney's 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