

BRB No. 89-3453

BOBBY S. BOND	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION AND ORDER

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

John F. Dillon (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Martin J. Nussbaum, Jr. (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 (6-106582) of District Director<sup>1</sup> N. Sandra Kitchin 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 filed a claim for benefits for a 7.5 percent monaural hearing impairment on February 24, 1987. Employer filed a notice of controversion on July 22, 1987. However, the disputed issues were resolved prior to transfer of the case to the Office of Administrative Law Judges.

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<sup>1</sup>The title "district director" has been substituted for the title "deputy commissioner" used in the statute. 20 C.F.R. §702.105.

Subsequently, claimant's counsel filed a fee petition for work performed before the district director, requesting \$1,576.75, representing 12.5 hours of legal services at the hourly rate of \$125, plus \$14.25 in expenses. Employer thereafter submitted objections. After considering employer's objections, the district director disallowed the costs requested, reduced the hourly rate to \$90, and reduced the number of hours requested by 5.25. Thus, the district director awarded claimant's counsel a fee in the amount of \$652.50. Employer was ordered to pay \$337.50 of the fee, and claimant was held liable for the remaining \$315, representing attorney time claimed prior to employer's receipt of formal notice of the claim, as a lien upon the compensation he received from employer. See 33 U.S.C. §928(a), (c).

On appeal, employer contends that the fee award by the district director is excessive and should be reduced; employer incorporates the objections it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer contends that the lack of complexity of the instant case mandates a reduction in the amount of the fee awarded to claimant's counsel. We disagree. 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). Thus, while the complexity of issues should be considered by the district director, it is only one of the relevant factors. See generally *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). As the district director specifically accounted for the lack of complexity of the case in reducing the \$125 hourly rate sought to \$90, employer's assertion that the complexity of the case does not warrant the fee awarded is rejected. Moreover, employer has not established that the district director abused her discretion in awarding an hourly rate of \$90, and we accordingly affirm the hourly rate awarded. See *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

We will not address employer's argument that the attorney's fee should be reversed or reduced in light of the nominal amount of the award. This contention was not raised before the district director and cannot be raised for the first time before the Board. See *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).

We also reject employer's contention that various entries in counsel's fee petition were either unnecessary or excessive. The district director considered employer's objections, reduced a number of the entries and found the remaining services rendered by claimant's counsel to be reasonable and necessary. We decline to disturb this rational determination. *Maddon*, 23 BRBS at 55.

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge