

MELVINA HALL )  
(Widow of WILL HALL) )  
 )  
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 Kitchin, District Director, United States Department of Labor.

Rebecca J. Ainsworth (Maples & Lomax, P.A.), Pascagoula, Mississippi, for the claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for the 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 (6-113925) of District Director 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 will not be set aside unless shown by the challenging party 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). In addition, claimant has submitted a fee petition for work performed before the Board in connection with employer's appeal of the administrative law judge's fee award and employer responds, objecting to the fee request. *See Hall v. Ingalls Shipbuilding, Inc.*, BRB No. 92-358 (July 15, 1994)(unpublished).<sup>1</sup>

Claimant's counsel sought an attorney's fee of \$949, representing 9.375 hours at \$100 per

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<sup>1</sup>By Order dated September 28, 1994, the Board informed claimant's counsel that his fee petition in connection with the appeal of the administrative law judge's fee award would be considered at the time the Board addressed employer's appeal of the district director's fee award, BRB No. 92-105, on the merits.

hour, plus \$11.50 in expenses for work performed before the district director in connection with claimant's hearing loss claim. The district director awarded counsel a fee of \$512.50, representing 5.125 hours at an hourly rate of \$100. Employer appeals the district director's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer objects to counsel's method of billing in minimum increments of one-quarter hour. Consistent with 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) (unpublished), we reduce the following entries from one-quarter to one-eighth hour: February 3, 1989 and January 3, 1990. 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 district director abused her discretion in this regard.<sup>2</sup> 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.<sup>3</sup> *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, 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 district director's fee award is modified to award a fee for 4.875 hours of work, but is affirmed in all other respects. Counsel is thus entitled to a fee of \$487.50 for work before the district director.

Turning to claimant's attorney's fee petition before the Board in connection with BRB No. 92-358, counsel seeks a total of \$495.75, representing 3 hours at \$150 per hour, and \$45.75 in

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<sup>2</sup>Although employer objected to the February 13, 1989 and August 8, 1990, entries on the grounds that they lack the requisite specificity under the regulation at 20 C.F.R. §702.132, the district director did not abuse her discretion in awarding a fee for these entries. Moreover, while employer objected to the one-quarter hour entries claimed after August 8, 1990, on the ground that it was time incurred subsequent to the claim's referral to the Office of Administrative Law Judges, the district director's award of a fee for these entries, which involved "wind-up" services subsequent to the filing of the administrative law judge's Decision and Order, was proper. See *Revoir v. General Dynamics Corp.*, 12 BRBS 524 (1980).

<sup>3</sup>We note that the district director properly determined that the time claimed prior to May 13, 1988, the date employer received formal notice of the claim, was chargeable to claimant as a lien upon his award of compensation but declined to assess a fee against claimant, finding that it would be inequitable to do so in light of the minimal amount of compensation awarded. See generally *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993); 33 U.S.C. §928(a),(c).

expenses. Employer has filed objections to the petition.

We initially reject employer's argument that it not liable for an attorney's fee. Because claimant's counsel successfully defended employer's appeal of the administrative law judge's fee award, his counsel is entitled to a fee reasonably commensurate with the necessary work performed before the Board. *See Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992).

Employer further objects to counsel's minimum quarter-hour billing method, and to specific entries. We agree with employer that the one-quarter hour entry claimed on January 22, 1992, for review of the Board's acknowledgement of appeal, does not conform with *Biggs* and *Fairley* and accordingly reduce this entry to one-eighth of an hour. As we view the remaining hours as reasonably commensurate with the necessary work performed before the Board, counsel is awarded a fee for 2.875 hours of services in connection with the appeal of the administrative law judge's fee award.

Lastly, employer objects to the requested hourly rate of \$150 and suggests that hourly rates for \$100 of Attorney Lomax, \$90 for Attorneys Ainsworth and Dillon, and \$70 for Attorney Reid-Boswell are more appropriate.<sup>4</sup> We reject employer's contention that the fee award of the administrative law judge in *Cox v. Ingalls Shipbuilding, Inc.*, 88-LHC-3335 (Sept. 5, 1991), mandates that we reduce counsel's requested hourly rate, since the determination of the amount of an attorney's fee is within the discretion of the body awarding the fee. Employer also contends that this rate is excessive because counsel's fee petition states that the hourly billing rate for work performed before September 1993 was \$125, and 2.75 of the 3 hours claimed were performed prior to this date. Nonetheless, after consideration of the relevant factors, we find the current rate of \$150 reasonable in this case. *See generally Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995). Consequently, we award claimant's counsel an attorney's fee of \$431.25 representing 2.875 hours at an hourly rate of \$150, plus expenses of \$45.75. 33 U.S.C. §928; 20 C.F.R. §802.203.

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<sup>4</sup>We note that none of the services claimed by counsel was performed by Lowry Lomax or Robin Reid-Boswell.

Accordingly, the Compensation Order-Award of Attorney's Fee of the district director is modified as stated herein, and is otherwise affirmed. Claimant's counsel is awarded an attorney's fee of \$431.25, plus \$45.75 in expenses, for services performed before the Board in connection with the prior appeal of the administrative law judge's award of attorney's fees, BRB No. 92-358.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge