

BRB Nos. 92-348 and 93-354

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

Appeal of the Compensation Order Award of Attorney's Fee of N. Sandra Kitchin, District Director, and the Supplemental Decision and Order Awarding Attorney Fees of Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

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

Paul M. Franke, Jr. and 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 (Case No. 6-103087) of District Director N. Sandra Kitchin and the Supplemental Decision and Order Awarding Attorney Fees (89-LHC-51) of Administrative Law Judge Kenneth A. Jennings 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).¹ The amount of attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, and abuse of discretion or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

¹By Order dated December 11, 1992, the Board consolidated for decision employer's appeal of the district director's fee award, BRB No. 92-348, with its appeal of the administrative law judge's fee award. BRB No. 93-354.

Claimant filed a claim under the Act seeking benefits for a noise-induced hearing loss. Claimant's counsel filed a Petition for Approval of Attorney's Fee for work performed before the district director, requesting \$944.75, representing 8.375 hours of services at \$100 per hour and \$107.25 in expenses. Employer filed objections to the fee petition. In a Compensation Order Award of Attorney's Fee, after considering employer's objections, the district director awarded counsel a total of \$650 for 5.5 hours of services rendered at a rate of \$100 per hour, and \$100 in expenses, finding that attorney time prior to May 22, 1987, is chargeable to claimant and that claimant should pay counsel a fee amount of \$100, which will be a lien on his compensation award. Employer was held liable for a fee of \$450 plus the requested expenses of \$100.

Claimant's counsel also filed a Petition for Approval of Attorney's Fee for work performed before the administrative law judge, requesting \$4,235.75, representing 33.50 hours of services at \$125 per hour and \$48.25 in expenses. Employer filed objections to the fee petition. In a Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge awarded counsel \$2,962.50 for services, plus \$48.25 in expenses.²

On appeal, employer challenges the district director's and the administrative law judge's awards of attorney's fees, incorporating by reference the objections made below into its appellate briefs.³ Claimant responds, urging affirmance of the fee awards.

Employer contends that the fee awards are excessive in view of the fact that this is a routine and uncontested 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, 20 C.F.R. §702.132, which provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done. *Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). In entering her 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. Further, the administrative law judge considered the expertise of the attorneys and the geographic area in awarding \$125 per hour to Lowry Lomax and \$100 per hour to Rebecca J. Ainsworth and John F. Dillon. We therefore reject employer's contention that the fee should be reduced on this basis. Moreover, employer has not established that the district director or administrative law judge abused her or his discretion in awarding the hourly rates, and we accordingly affirm the hourly rates awarded. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

²The administrative law judge awarded attorney Lowry Lomax a fee for 12 hours of services at \$125 per hour, and awarded attorneys Rebecca J. Ainsworth and John F. Dillon fees for 14.25 hours of services at \$100 per hour.

³Inasmuch as the administrative law judge's award of benefits was affirmed by the Board, *see Lins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 62 (1992), we reject employer's contention that the district director's fee award is premature.

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) (table), that its fee order in *Fairley* is considered to be circuit court precedent. The one-quarter hour charges before the district director on May 22, 1987, November 20, 1990, January 9, 1991, and May 22, 1991, for review of correspondence are excessive under this criteria, and we therefore reduce the entries to one-eighth hour each. The remaining entries awarded by the district director conform to the Fifth Circuit's guidelines. See generally *Ross v. Ingalls Shipbuilding, Inc.* 29 BRBS 42 (1995). Moreover, the administrative law judge's award of fees conforms to the criteria set forth in the decisions of the United States Court of Appeals for the Fifth Circuit in *Fairley* and *Biggs*.

Employer also contends that time spent in certain discovery-related activity, and in preparing and reviewing various correspondence and legal documents was either unnecessary, excessive, or clerical in nature. Employer has not established that the administrative law judge and district director abused their discretion in this regard.⁴

⁴Employer'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 district director's Compensation Order Award of Attorney's Fee is modified to reflect the disallowance of one-half hour and is otherwise affirmed. Employer is liable for a fee of \$400, plus \$100 in expenses for work performed before the district director. The administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge