

SAM S. BURNEY, Sr.)	
)	
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.

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

Paul M. Franke, Jr. (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. 6-100665) 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 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 filed an attorney's fee petition for work performed before the district director in connection with his hearing loss claim, requesting \$962, representing 9.5 hours of legal services at the hourly rate of \$100, plus \$12 in expenses. After considering employer's objections, the district director disallowed the costs requested and awarded claimant's counsel a fee of \$950. Employer was ordered to pay \$575 of the fee, and claimant was held liable for the remaining \$475, 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.¹ 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 approving the \$100 hourly rate sought, 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 \$100 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 and found the services rendered by claimant's counsel to be reasonable and necessary. We decline to disturb this rational determination. *Maddon*, 23 BRBS at 55.

Employer next objects to counsel's minimum quarter-hour billing method. In its unpublished order in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990), the United States Court of Appeals for the Fifth Circuit stated that, generally, attorneys should charge no more than one-quarter of an hour for preparation of a one-page letter, and one-eighth of an hour for review of a one-page letter. The Fifth Circuit recently stated that this fee order is considered to be precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995)(unpublished). Counsel's fee petition generally conforms to these guidelines. However, we find three one-quarter hour entries requested for services performed on June 9, 1987, July 13, 1987, and May 27, 1991, to be excessive under these criteria. Accordingly, we modify the award of the district director to reflect the reduction of these entries from one-quarter hour to one-eighth of an hour each consistent with *Biggs* and *Fairley*.

¹We reject employer's contention that this was an uncontested claim. Before the administrative law judge, employer contested the issues of the nature and extent of disability, the applicable compensation rate and its liability for a Section 14(e), 33 U.S.C. §914(e), penalty. *See Jt. Ex. 1.*

Accordingly, the district director's Compensation Order - Award of Attorney's Fee is modified to reflect the reduction of the itemized entries on June 9, 1987, July 13, 1987 and May 27, 1991 from one-quarter to one-eighth of an hour. The district director's Compensation Order - Award of Attorney's Fee is affirmed in all other respects.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge