

LEROY F. FOSTER)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:_____
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney's Fees of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

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

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 (89-LHC-1924) of Administrative Law Judge C. Richard Avery 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 the law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$3,531.25, representing 28.25 hours at \$125 per hour, 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 \$2,675, representing 26.75 hours at an hourly rate of \$100, plus expenses of \$30. Employer appeals the administrative law judge'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Shipbuilding, Inc. v. Director, OWCP [Fairley], No. 89-4459 (5th Cir. July 25, 1990) (unpublished) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (table), we reduce the April 28, 1990, entry to review a check from one-quarter hour to one-eighth 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 of the administrative law judge is modified to reflect the reduction of one-quarter hour entry to one-eighth of an hour. Counsel is therefore entitled to a fee of \$2,662.50, representing 26.625 hours of services rendered at a rate of \$100 per hour. In all other respects, the administrative law judge's Supplemental Decision and Order Awarding 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