

G. C. RANKIN)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	DATE ISSUED:
)	
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.

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 Supplemental Decision and Order Awarding Attorney's Fees (90-LHC-2178) 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 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 and Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$2,455.50, representing 18.75 hours at \$125 per hour and \$111.75 in costs, 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 \$2,062.50, representing 18.75 hours at an hourly rate of \$110, plus \$95 in costs. 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 award.

Employer's objection to the hourly rate awarded is rejected as it has not been 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 also objects to counsel's use of the quarter-hour minimum billing method. In *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4495 (5th Cir. July 25, 1990)(unpublished), the United States Court of Appeals for the Fifth Circuit stated that attorneys, generally, may not bill more than one-eighth hour for review of a one-page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 court subsequently stated that its fee order in *Fairley* is considered to be circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table). The one-quarter hour charges on January 16, 1991 and March 12, 1991 are excessive under these criteria and are therefore reduced to one-eighth of an hour each. The remaining entries are not excessive under the Fifth Circuit's guidelines.¹

We also reject employer's contention that the time spent in certain discovery-related activity is either unnecessary or excessive. The administrative law judge 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; *Cabral*, 13 BRBS at 99-100.

¹Employer also contends that because this was a routine and uncontested hearing loss claim, the issues were neither complex nor novel, and the amount of benefits is nominal, the attorney's fee award should be reduced. Employer, however, did not raise these contentions below, and we need not address them for the first time on appeal. 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).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees is modified to reflect the disallowance of an attorney's fee for one-quarter hour, and is otherwise affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge