

BRB No. 92-2008

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| DANIEL W. BARTLETT |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| INGALLS SHIPBUILDING, |) | |
| INCORPORATED |) | DATE ISSUED: |
| |) | |
| Self-Insured |) | |
| Employer-Petitioner |) | DECISION and ORDER |

Appeal of the Compensation Order-Award of Attorney's Fees of N. Sandra Ramsey, District Director, United States Department of Labor.

John F. Dillon (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 Fees (No. 6-110587) of District Director N. Sandra Ramsey 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. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$750, representing 7.5 hours of services at \$100 per hour, and \$74.50 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 \$750, representing 7.5 hours at an hourly rate of \$100, plus expenses of \$65. Employer appeals the district director's fee award on various grounds, 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the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990) (unpublished)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 (1995) (table), we reduce the following entries from one-quarter hour to one-eighth hour: October 19, 1988; December 1, 1989; and January 13, 1990 (2 entries).

After considering employer's 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. 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 argues on appeal, however, that the district director erred in holding it liable for those attorney's fees incurred prior to January 12, 1989, when it received formal notice of the claim, affixing copies of supporting documentation to its brief on appeal. Claimant responds that inasmuch as counsel for employer stipulated at the hearing before the administrative law judge that it received formal notice of the claim on December 22, 1987, and submitted the actual Notice of Claim form as Employer's Exhibit 1, the district director's Compensation Order, holding employer liable for the entire requested fee, which involved services performed after that date, should be affirmed. Claimant maintains that the notice dated January 12, 1989, which employer refers to, was actually a second formal notice. Consistent with the plain language of Section 28(a), 33 U.S.C. §928(a), employer may only be held liable for those services rendered after 30 days from the date that employer received formal notice of the claim or, within the 30 day period after such notice, from the date it declined to pay benefits, whichever occurs sooner. See *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 177 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993); see generally *Jones v. C & P Telephone Co.*, 11 BRBS 7 (1979), *aff'd mem.*, No. 79-1458 (D.C. Cir. February 26, 1980), *amended*, (D.C. Cir. March 31, 1980). Inasmuch as the relevant documentation necessary to determine when employer received formal notice of the claim is not in the administrative file before us, we vacate the district director's fee award and remand for her to resolve the parties' factual dispute, and to enter an award which holds employer liable only for those fees incurred subsequent to formal notice.

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 Compensation Order-Award of Attorney's Fees of the district director is affirmed in part, vacated in part, and modified in part, and the case is remanded for further consideration consistent with this decision.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge