

BRB No. 92-2438

CATHERINE L. BENN )  
 )  
 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 Fee of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Paul M. Franke, Jr. (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 Fee (88-LHC-3306) of Administrative Law Judge James W. Kerr, Jr., 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. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for compensation under the Act, and was successful in obtaining benefits for his hearing loss. Claimant's counsel filed a Petition for Approval of Attorney's Fee, requesting a total of \$3,516, representing 27.5 hours at a rate of \$125 per hour, and \$78.50 in expenses. Employer filed objections to the fee petition. Claimant replied, and sought a fee for an additional hour of services. In a Supplemental Decision and Order Awarding Attorney's Fee, after considering employer's objections, the administrative law judge awarded counsel a total of \$2,328.50, representing 19.375 hours at a rate of \$100 per hour, 2.5 hours at a rate of \$125 per hour, and \$78.50 in expenses.

On appeal, employer challenges the administrative law judge's award of an attorney's fee,

incorporating by reference the objections it made below into its appellate brief. Claimant has not responded to this appeal.

Employer contends that the fee award is excessive, maintaining that the case was 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, Section 702.132, 20 C.F.R. §702.132, which provides that the award of an attorney's fee 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). In the instant case, the administrative law judge specifically considered the regulatory criteria and reduced counsel's requested hourly rate from \$125 to \$100 for non-trial work, allowing a \$125 hourly rate for trial time. Moreover, employer has not established that the administrative law judge abused his discretion in setting the hourly rates, and they are therefore affirmed. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer challenges the number of hours requested by claimant's counsel and approved by the administrative law judge. In considering counsel's fee petition, the administrative law judge addressed employer's specific objections, and reduced the number of hours sought from 27.5 hours to 21.875. Employer's assertions on appeal are insufficient to meet its burden of proving that the administrative law judge abused his discretion in this regard. *See Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). Employer also objects to counsel's use of the quarter-hour minimum billing method. Consistent with the decisions of the United States Court of Appeals for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 90-4559 (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 one-quarter hour charges before the administrative law judge on June 13, 1989, June 27, 1989, July 13, 1989 and May 22, 1990, for review of correspondence, to one-eighth hour each.<sup>1</sup>

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<sup>1</sup>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 Awarding Attorney's Fee of the administrative law judge is modified to reduce the awarded fee by one-half hour as stated herein, 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