

D.A. PATT	)	
	)	
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 Ramsey, District Director, United States Department of Labor.

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 Compensation Order, Award of Attorney's Fee (Case No. 6-103387) 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. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock, Inc.*, 12 BRBS 272 (1980).

Claimant filed a claim on November 24, 1986, for benefits under the Act, contending that he sustained a 7.51 percent binaural noise-induced, work-related hearing loss. On October 26, 1987, prior to the transfer of the case to the Office of Administrative Law Judges, employer voluntarily commenced payment of permanent partial disability benefits to claimant for a 7.51 percent binaural impairment based on an average weekly wage of \$297.62.

Claimant's counsel subsequently filed an amended fee petition for work performed at the district director level, requesting a fee for 9.25 hours of services rendered at \$100 per hour, for a total of \$925, plus expenses of \$72.50. Employer thereafter submitted objections to counsel's fee request. In her Compensation Order, Award of Attorney's Fee, the district director, addressing employer's objections to the fee requested, approved the hourly rate and the number of hours sought by claimant's counsel, and reduced the expenses claimed to \$60. The district director also

determined that attorney time prior to June 11, 1987, the date of the district director's formal notice of claim to employer, is chargeable to claimant as a lien upon his compensation. Thus, employer was held liable for a fee of \$535 plus expenses of \$60, and claimant was held liable for a fee of \$450.

Employer appeals the fee award, incorporating by reference the arguments it raised below into its appellate brief. Claimant has not responded.

Initially, we decline to address employer's contention that counsel is not entitled to an attorney's fee after October 26, 1987, because employer voluntarily accepted this claim as compensable and tendered benefits accordingly on this date. Employer also contends that claimant's counsel previously received a fee in connection with this claim, and thus is not entitled to the fee awarded by the district director. Employer did not raise these arguments before the district director and is not permitted to raise them 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 in part. part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995).

Moreover, we reject employer's challenge to the hourly rate awarded, as employer has not established an abuse of discretion in this regard. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989). Employer additionally challenges the number of hours requested by counsel and approved by the district director. In considering counsel's fee petition, the district director addressed employer's objections to itemized entries and found the entries to be reasonable. Employer's assertions on appeal are insufficient to meet its burden of proving that the district director abused her discretion, and we decline to reduce the hours approved by the district director. *See Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1991).

Finally, employer objects to counsel's use of a quarter-hour minimum billing method. The United States Court of Appeals for the Fifth Circuit held that its unpublished fee order in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990), is considered to be circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(unpublished). In *Fairley*, the court stated that attorneys, generally, may not charge more than one-eighth hour for reading a one-page letter and one-quarter hour for writing a one-page letter. In the instant case, contrary to the statement in the fee petition that one-page letters from employer or the Department of Labor were billed at one-eighth of an hour, the entries concerning the review of letters dated June 4, 1987, July 29, 1987, December 6, 1987, January 27, 1988 and September 17, 1988 are billed at one-quarter hour each, without further explanation. As these entries are excessive under the criteria of *Fairley* and *Biggs*, we modify the district director's award to reduce these entries to one-eighth hour each.

Accordingly, the district director's Compensation Order is modified to reflect the disallowance of .625 hours, entitling counsel to an attorney's fee of \$922.50, plus expenses of \$60. Employer is liable for a fee of \$485, plus expenses, and claimant is liable for a fee of \$437.50. In all other respects, the district director's award is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge