

ELTON A. BARRILLEAUX)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Richard D. Mills,
Administrative Law Judge, United States Department of Labor.

John F. Dillon (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER,
Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand Awarding Benefits (88-LHC-3183) of Administrative Law Judge Richard D. Mills 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). In his Decision and Order on Remand, the administrative law judge affirmed his Supplemental Decision and Order Awarding Attorney Fees dated April 8, 1991, and employer appeals the fee awarded. 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 & Dry Dock Co.*, 12 BRBS 272 (1980).

In an amended fee petition, claimant's counsel sought an attorney's fee of \$781.25, representing 6.25 hours at \$125 per hour, and \$14.25 in expenses, 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 \$687.50, representing 6.25 hours at an hourly rate of \$110, plus expenses of \$14.25. 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's objections to the number of hours and hourly rate awarded are rejected, 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). We note that the administrative law judge's award, as well as counsel's amended fee petition, conform to the criteria set forth in 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).

Employer's remaining contentions, alleging that the fee is excessive in light of the limited success and nominal amount of benefits awarded, and in light of the proposition that an attorney's fee assessed must be based on the difference between the amount initially paid and the amount that was ultimately awarded, 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 administrative law judge's Decision and Order on Remand Awarding Benefits, which affirmed his Supplemental Decision and Order Awarding Attorney Fees, is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge