

BRB Nos. 93-248
and 93-1076

MARION W. COOLEY, SR.)
)
 Claimant-Respondent)
)
 v.) DATE ISSUED:
)
 INGALLS SHIPBUILDING,)
 INCORPORATED)
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeals of the Supplemental Decision and Order Awarding Attorney's Fees of A. A. Simpson, Jr., Administrative Law Judge, United States Department of Labor and the Compensation Order Award of Attorney's Fee of N. Sandra Ramsey, District Director, United States Department of Labor.

Rebecca J. Ainsworth (Maples & Lomax), Pascagoula, Mississippi, for claimant.

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 Supplemental Decision and Order Awarding Attorney Fees (90-LHC-2350) of Administrative Law Judge A. A. Simpson, Jr., and the Compensation Order Award of Attorney's Fees (Case No. 6-097317) 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 may only be set aside if shown to be arbitrary, capricious, an abuse of discretion, or not in accordance with the law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$3,375, representing 27.75 hours at \$125 per hour 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 \$1,617.00, representing 4 hours at an hourly rate of \$95, 12 hours at an hourly rate of \$100, plus expenses of \$137. Claimant's counsel also sought an attorney's fee of \$925, representing 9.25 hours at \$100 per hour for work performed before the district director in connection with this claim. The district director awarded claimant's counsel the full \$925 fee requested.

Employer appeals both the administrative law judge Supplemental Decision and Order Awarding Attorney's Fees, BRB No. 93-248, and the Compensation Order Award of Attorney's Fees of the district director, BRB No. 93-1076, incorporating by reference the arguments it made below into its appellate briefs.¹ Claimant, incorporating his reply brief below, responds, urging affirmance of the administrative law judge's fee award. Claimant does not respond to employer's appeal of the district director's fee award.

Employer's contention that the fee awarded by the administrative law judge should be limited by the amount of additional compensation obtained by claimant must fail. The Board has consistently rejected the contention that the amount of the fee awarded under Section 28(b) must be limited in the manner urged by employer. *See, e.g., Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994)(McGranery, J., dissenting)(Decision on Recon.); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993).

Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour before the administrative law judge is also rejected, as the administrative law judge considered this objection, and his award conforms 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]*, No. 94-40066 (5th Cir. Jan. 12, 1995) (unpublished). With regard to the district director's fee award, however, consistent with the decisions in *Fairley* and *Biggs*, we reduce the following entries from one-quarter hour to one-eighth hour: April 17, 1987, April 24, 1987, April 28, 1987, May 13, 1987 and October 20, 1987.

After considering employer's remaining objections to the number of hours and hourly rate awarded, we reject these contentions as employer has not shown that either the administrative law judge or the district director abused his or her discretion in this regard.² *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).

¹By Order dated March 18, 1993, the Board consolidated these appeals for purposes of decision. 20 C.F.R. §802.104.

²We note that the district director properly determined that employer was liable for the entire fee as all of the services claimed were performed after 30 days from November 17, 1986, the date employer received formal notice of the claim. *See generally Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.2d 209 (5th Cir. 1993); 33 U.S.C. §928(a),(c).

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 Fees of the administrative law judge is affirmed. BRB No. 93-248. The Compensation Order Award of Attorney's Fees of the district director is modified as stated herein, and is otherwise affirmed. BRB No. 93-1076.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge