

BRB No. 93-0268

J. D. McCULLER)
)
 Claimant-Respondent)
)
 v.)
)
 INGALLS SHIPBUILDING,) DATE ISSUED:
 INCORPORATED)
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of A. A. Simpson, Jr., 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 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-1328) of Administrative Law Judge A. A. Simpson, 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 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).

Claimant filed a claim under the Act seeking benefits for a noise-induced hearing loss. Prior to the scheduled hearing in this case, the parties entered into an agreement whereby employer was to provide claimant with a lump sum payment of \$199.12 plus \$52.22 in interest and \$19.91 in penalties to compensate him for his occupational hearing loss. Employer also accepted liability for payment of medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907. Accordingly, on May 23, 1991, the parties filed a Joint Motion with the administrative law judge, requesting that the case be remanded to the district director for further appropriate disposition. On May 29, 1991, the

administrative law judge issued an Order of Remand.

Claimant's counsel subsequently sought an attorney's fee of \$2,389.00, representing 19 hours of services at \$125 per hour, and \$14 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 \$1,220.88, representing 8.75 hours of services at an hourly rate of \$85, 4.875 hours of services at an hourly rate of \$95, plus expenses of \$14. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant, incorporating his reply brief below, 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).¹ Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour also is 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]*, 46 F.3d 66 (5th Cir. 1995) (unpublished).

Employer's remaining 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).

¹Although employer objected to the May 17, 1990, June 5, 1990 and September 6, 1990 entries, below on specificity grounds, the administrative law judge did not abuse his discretion in awarding a fee for these entries which substantially comply with the requirements of the applicable regulation. 20 C.F.R. §702.132.

Accordingly, the administrative law judge's 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