

BRB No. 93-0363

|                       |   |                    |
|-----------------------|---|--------------------|
| T. J. WHITE           | ) |                    |
|                       | ) |                    |
| 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 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 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 (89-LHC-1691) 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). The amount of an attorney's fee award is discretionary and may be set aside only if 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's counsel submitted a fee petition to the administrative law judge requesting an attorney's fee of \$2,939.50, representing 23.25 hours of legal services, at an hourly rate of \$125 per hour, as well as \$33.25 in expenses, for work performed before the administrative law judge in connection with claimant's hearing loss claim. Employer filed objections to the fee petition. Subsequently, the administrative law judge, after noting employer's objections to the fee petition, reduced the hourly rate sought by counsel to \$110, disallowed eight of the 23.25 hours requested by

counsel, and approved the requested expenses in a Supplemental Decision and Order. Accordingly, the administrative law judge awarded claimant's counsel a fee of \$1,677.50, representing 15.25 hours of legal services performed at the hourly rate of \$110, and \$33.25 for expenses.

On appeal, employer challenges the administrative law judge's attorney's fee award, incorporating by reference the arguments it made before the administrative law judge into its appellate brief. Claimant responds, urging affirmance.

We initially hold that the administrative law judge did not abuse his discretion in considering the late-filed fee petition in this case. The Act contains no time limit for an application of an attorney's fee. *See Baker v. New Orleans Stevedoring Co.*, 1 BRBS 134 (1974); 33 U.S.C. §928; 20 C.F.R. §702.132. In the instant case, the administrative law judge specifically stated that he would consider the fee petition since there is no evidence of prejudice to employer. We affirm this determination as within his discretion. *See Paynter v. Director, OWCP*, 9 BLR 1-190 (1986)(Ramsey, C.J., dissenting).

Employer contends that the fee awarded by the administrative law judge is excessive, maintaining that the case was routine, uncontested and not complex. Employer also argues that the fee award is not reasonably commensurate with the amount of benefits awarded claimant. The administrative law judge considered the routine and uncomplicated nature of the instant case in reducing counsel's requested hourly rate from \$125 to \$110. Additionally, pursuant to employer's objection in this regard, the administrative law judge specifically considered the necessity of the number of hours sought by counsel and thereafter reduced the number of hours sought by 8 hours, a reduction of approximately 33 percent.<sup>1</sup> We, therefore, reject employer's contention that the awarded fee must be reduced on this basis. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *see generally Snowden v. Ingalls Shipbuilding, Inc.*, 25 BRBS 245 (1991)(Brown, J., dissenting on other grounds), *aff'd on recon. en banc*, 25 BRBS 346 (1992)(Brown, J., dissenting on other grounds).

We also reject employer's assertion that the awarded hourly rate does not conform to the reasonable and customary charges in the area where the claim arose. Employer's mere assertion in this regard is insufficient to meet its burden of proving that the awarded rate is excessive; we therefore affirm the rate awarded by the administrative law judge to counsel. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer also objects to the number of hours awarded by the administrative law judge; we reject these contentions, as employer has not shown that the administrative law judge abused his discretion in this regard. *See Ross*, 29 BRBS at 42; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

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

---

<sup>1</sup>In rejecting employer's objection, the administrative law judge specifically rejected employer's contention that the fee should be directly proportional to the amount of compensation awarded to claimant.

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.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge