

VERNON PETERSON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	DATE ISSUED:
)	
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.

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-2481) 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 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 and Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel filed a Petition for Approval of Attorney's Fee, requesting 28.25 hours for services rendered before the administrative law judge in connection with his hearing loss claim, at a rate of \$125 per hour, plus \$36 in expenses. Employer filed objections to the fee petition. In his Supplemental Decision and Order, the administrative law judge, after addressing employer's specific objections, awarded claimant's counsel a fee of \$2,296.25, representing 20.875 hours of services at \$110 per hour, plus the requested expenses.

On appeal, employer challenges the administrative law judge's award of an attorney's fee, incorporating by reference the objections it raised below into its appellate brief.

Employer initially contends that the fee award is excessive in view of the fact that this was a routine hearing loss claim involving undetailed form pleadings.¹ An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, Section 702.132, 20 C.F.R. §702.132, which provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved and the amount of benefits awarded. *See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). In the instant case, the administrative law judge considered these criteria prior to reducing the number of hours and the hourly rate sought by claimant's counsel. We therefore reject employer's contention that the awarded fee must be further reduced on this basis.

We also reject employer's contention that the time spent in certain discovery-related activity, and in preparing and reviewing various correspondence and legal documents, was either unnecessary, excessive, or clerical in nature. The administrative law judge considered employer's objections, reduced the number of hours requested by 7.375, and found the remaining services to be reasonable and necessary. We decline to disturb this rational determination. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981); *see also Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1985)(unpubl.)

Employer further contends that the \$110 hourly rate awarded to claimant's counsel is excessive, asserting that an hourly rate of \$70 to \$85 would be more reasonable. The administrative law judge determined that the hourly rate of \$125 sought by claimant's counsel was excessive and awarded an hourly rate of \$110, which he found to be fair and reasonable for the issues involved in the region where this case was tried. As employer's mere assertion that the awarded rate does not conform to the reasonable and customary charges in the area where this claim arose is insufficient to meet its burden of proving that the rate is excessive, we affirm the hourly rate awarded by the administrative law judge to counsel. *See Maddon*, 23 BRBS at 55.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding

¹Employer also contends that the administrative law judge erred in holding it liable for claimant's attorney's fee under Section 28(a), 33 U.S.C. §928(a), arguing that there was no successful prosecution of the claim because claimant was found to have a zero percent whole man impairment under the American Medical Association *Guides to the Evaluation of Permanent Impairment*, and thus, was not entitled to compensation. Employer alternatively argues that the awarded fee is excessive because the award of medical benefits is nominal. Employer failed to raise these contentions in its objections to the fee petition which it filed with the administrative law judge; thus, we will not address them for the first time on appeal. *See 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 Productions Co.*, 21 BRBS 261 (1988).

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