

WILLIAM C. WRIGHT)	
)	
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.

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 Supplemental Decision and Order Awarding Attorney Fees (89-LHC-1687) 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 & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$1,938.75, representing 15.25 hours at \$125 per hour, and \$32.50 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 \$1,086.25, representing 9.875 hours at an hourly rate of \$110, plus expenses of \$32.50. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant has not responded to this appeal.

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). 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for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990)(unpublished) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995)(unpublished).

Employer's further objection that any attorney's fee assessed against it must be based solely on the difference between the amount initially paid and the amount that was ultimately awarded was properly rejected by the administrative law judge, as the Board has held that a fee larger than this amount may be reasonable in a given case. *Ross*, 29 BRBS at 43 n. 3; *Mason v. Baltimore Stevedoring Co.*, 22 BRBS 413 (1989); Supplemental Decision and Order at 2. The administrative law judge recognized that the regulation provides that the award shall be reasonably commensurate with the necessary work done, the quality of the representation, and the complexity of the legal issues involved, as well as the amount of benefits awarded, *see* 20 C.F.R. §702.132, and he considered these criteria in entering his fee award. Supplemental Decision and Order at 2.

Employer's remaining contentions challenging its liability for an attorney's fee pursuant to Section 28(a) or (b), 33 U.S.C. §928(a), (b), and alleging that the fee is excessive in light of the nominal amount of benefits, which were not raised below, will not be addressed for the first time on appeal.¹ *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).

¹Moreover, we note that Section 28(a), 33 U.S.C. §928(a), is not applicable as employer paid compensation without an award. *Henley v. Lear Siegler, Inc.*, 14 BRBS 970, 973 (1982). Also, we note that the administrative law judge awarded claimant a penalty pursuant to Section 14(e), 33 U.S.C. §914(e). Decision and Order at 5. This penalty constitutes additional compensation within the meaning of Section 28(b), 33 U.S.C. §928(b). *Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61 (1991)(decision on remand).

Accordingly, the Supplemental Decision and Order 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