

SAMUEL L. SAVAGE)	
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Claimant-Respondent)	
)	
v.)	
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INGALLS SHIPBUILDING, INCORPORATED)	DATE ISSUED:
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)	
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.

Rebecca J. Ainsworth (Maples and 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-3545) 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, a retiree, filed a claim for benefits based on his exposure to loud noise during the course of his employment with employer. The case was referred to the Office of Administrative Law Judges for a formal hearing on August 18, 1989. Prior to the formal hearing, the parties agreed to settle the case for \$2,578.68 in past compensation through November 2, 1990, and bi-weekly benefits for an 11 percent whole man impairment beginning November 3, 1990 and continuing, plus \$159.20 in interest. In a Decision and

Order dated December 18, 1990, the administrative law judge approved the settlement pursuant to Section 8(i), 33 U.S.C. §908(i) (1988).

Thereafter, claimant's counsel submitted a petition for an attorney's fee for work performed before the administrative law judge, requesting a fee of \$2,337.75, representing 18.38 hours at \$125 per hour, plus expenses of \$40.25. Employer filed objections, to which claimant replied. In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge, after consideration of employer's objections, reduced the hourly rate to \$110, and awarded a fee of \$2,021.80 for 18.38 hours 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. Claimant responds, urging affirmance of the fee award.

We reject employer's contention that time spent on claimant's deposition, on certain discovery-related activities, and in preparing and reviewing various correspondence and legal documents was either unnecessary or excessive. The administrative law judge considered employer's objections, but found all the services rendered by claimant's counsel to be reasonable and necessary. We decline to disturb this rational determination. See *Maddon*, 23 BRBS at 62; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

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 considering the nature of the case, the experience of the attorneys and the quality of the representation. 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 62.

Employer's contentions that were not raised below will not be addressed for the first time on appeal. *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993)(Brown and McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'g in part, part 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 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