

BRB Nos. 93-1087
and 93-1363

HARBERT E. HALL)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeals of the Supplemental Decision and Order Awarding Attorney's Fees of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor, and the Compensation Order-Award of Attorney's Fees of N. Sandra Ramsey, District Director, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof), Mobile, Alabama, for the claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for the 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's Fees (90-LHC-2723) of Administrative Law Judge James W. Kerr, Jr., and the Compensation Order-Award of Attorney's Fees (6-111925) of District Director N. Sandra Ramsey 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).¹ The amount of an attorney's fee award is discretionary and will

¹By Order dated May 12, 1993, the Board consolidated employer's appeal of the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees, BRB No. 93-1087, with employer's appeal of the district director's Compensation Order-Award of Attorney's Fees, BRB No. 93-1363.

not be set aside unless 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 sought an attorney's fee of \$1,837.50 for work performed before the administrative law judge in connection with claimant's hearing loss claim, representing 12.25 hours at \$150 per hour, plus \$25 in expenses. The administrative law judge awarded counsel a fee of \$1,493.75, representing 11.25 hours at an hourly rate of \$125, plus expenses of \$25. Claimant's counsel also sought an attorney's fee of \$1,102.50, representing 6.25 hours of services at an hourly rate of \$150 and 1.5 hours of services at \$110 per hour for work performed before the district director. The district director awarded claimant's counsel a fee of \$775, representing 7.75 hours at an hourly rate of \$100. Employer appeals both the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees, BRB No. 93-1087, and the district director's Compensation Order-Award of Attorney's Fees, BRB No. 93-1363, incorporating by reference the arguments it made below into its appellate briefs. Claimant responds, urging affirmance of both fee awards.

Employer's objections to the number of hours and hourly rate awarded are rejected, as it has not shown that the administrative law judge or the district director² abused his or her discretion in this regard.³ *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). Moreover, employer's argument that various itemized entries claimed in both fee petitions for preparation and review of routine correspondence are excessive is rejected; both fee awards conform 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 (1995) (table).

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 McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd 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).

²Although employer objected to the March 14, 1990 and March 27, 1990 entries in the fee petition before the district director on the ground that the entries lack the specificity required by the regulation, the district director did not abuse her discretion in awarding a fee for these entries. 33 U.S.C. §702.132.

³We note that the district director properly held employer liable for the entire fee inasmuch as all of the services claimed were performed more than 30 days subsequent to January 6, 1988, when employer received formal notice of the claim. *See generally Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993).

Accordingly, the Compensation Order-Award of Attorney's Fees of the district director is affirmed, BRB No. 93-1363. The Supplemental Decision and Order Awarding Attorney's Fees of the administrative law judge is also affirmed. BRB No. 93-1087.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge