

ROBERT CARROLL)	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED: _____
)	
INGALLS SHIPBUILDING,)	
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 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-2584) 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 only be set aside if shown to be arbitrary, capricious, an abuse of discretion, or not in accordance with the law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, a chipper and welder, who worked for employer for approximately three years from 1972 until 1977, and again in 1986, sought compensation under the Act for a 4.6 percent binaural hearing impairment based on the results of a June 6, 1987, audiogram. On January 10, 1988, employer initiated voluntary payment for a 4.6 percent binaural impairment and as of March 11, 1988, had completed voluntary payment of \$3,093.45 for a 7.3 percent binaural hearing loss calculated pursuant to 33 U.S.C. §908(c)(13)(B) based upon an average weekly wage of \$317.81. The case was referred to the Office of Administrative Law Judges for a formal hearing on May 31, 1989.

In his Decision and Order, the administrative law judge awarded claimant compensation for a 2.6 percent binaural hearing impairment based upon an average weekly wage of \$229.18, interest,

medical benefits, and an assessment under Section 14(e), 33 U.S.C. §914(e).

Claimant's counsel sought an attorney's fee of \$3,656.25, representing 29.25 hours at \$125 per hour, 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 \$2,351.25, representing 21.375 hours at an hourly rate of \$110, plus expenses of \$77.25. 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 employer's appeal.

Employer initially contends that it is not liable for an attorney's fee. Although at the time the case was referred by the district director to the Office of Administrative Law Judges, employer had completed voluntary payment of compensation for a 7.3 percent binaural hearing loss based on an average weekly wage of \$317.81 resulting in an overpayment of \$2,2298, as a result of counsel's efforts before the administrative law judge claimant's counsel was successful in establishing claimant's right to an assessment under Section 14(e), and to medical benefits. *See* 33 U.S.C. §907.¹ As claimant was ultimately successful in obtaining additional compensation for claimant, we affirm the administrative law judge's determination that employer is liable for claimant's attorney's fees pursuant to Section 28(b) of the Act, 33 U.S.C. §928(b). *See Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61, 61 (1991) (decision on remand).

Employer's contention that the fee awarded by the administrative law judge should be limited by the amount of additional compensation must fail. The Board has consistently rejected the notion that the amount of a fee awarded under Section 28(b) must be limited in the manner employer urges. *See, e.g., Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994) (McGranery, J., dissenting) (Decision on Recon.).

Employer's objections to the number of hours and the 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]*, 46 F.3d 66 (5th Cir. 1995) (unpublished).

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 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).

¹Employer's liability for medical benefits is not offset by the overpayment of disability compensation. *See Aurelio v. Louisiana Stevedores, Inc.*, 22 BRBS 418 (1989), *aff'd mem.*, No. 90-4135 (5th Cir. March 15, 1991).

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