

LEFFIE H. FOUNTAIN)	
)	
Claimant)	
)	
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, Jr. (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-3547) 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 under the Act for a noise-induced, work-related hearing loss on April 8, 1988. A Decision and Order Approving Compromise Settlement was issued on November 30, 1990, in which claimant obtained past compensation of \$1,931.62, \$147.45 in interest, and bi-weekly benefits of \$28.80 from November 2, 1990, and continuing; additionally, employer agreed to pay for claimant's medical expenses associated with his injury as well as an attorney fee to be determined by the administrative law judge in a later proceeding.

Subsequent to the issuance of the administrative law judge's order, claimant's counsel submitted a fee petition to the administrative law judge requesting an attorney's fee of \$4,125, representing 33 hours of legal services at the hourly rate of \$125. Thereafter, employer filed

objections to the fee petition. In a Supplemental Decision and Order, the administrative law judge declined to address those entries for services rendered prior to referral of the claim to the Office of Administrative Law Judges, reduced the number of hours sought by counsel to 16.375, and reduced the hourly rate sought to \$110. Accordingly, the administrative law judge awarded claimant's counsel a fee of \$1,801.25.

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.

Employer's objections to the number of hours and to 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]*, No. 94-40066 (5th Cir. Jan. 12, 1995)(unpublished).

Employer's contention that the nominal benefits received do not merit the fee awarded was not raised before the administrative law judge. Arguments which 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 (1993), *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).

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