

JULIUS HOSKINS, JR.	)	
(Deceased)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING,	)	DATE ISSUED: _____
INCORPORATED	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT	)	
OF LABOR	)	
	)	
Respondent	)	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.

Mark A. Reinhalter (J. Davitt McAteer, Acting Solicitor of Labor; Carol A. DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (91-LHC-530) 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).

Decedent filed a claim for compensation under the Act on February 23, 1987, for a noise-induced work-related hearing impairment; however, he died on April 22, 1989, due to non work-related causes. The administrative law judge awarded permanent partial disability compensation pursuant to Section 8(c)(23) of the Act, 33 U.S.C. §908(c)(23), payable to the Special Fund under Section 8(d)(3) of the Act, 33 U.S.C. §908(d)(3)(1988). Claimant<sup>1</sup> appealed the administrative law judge's decision to award benefits to the Special Fund rather than to decedent's estate. The Board reversed the administrative law judge's award under Section 8(c)(23) of decedent's accrued benefits to the Special Fund, and modified the administrative law judge's decision to reflect decedent's estate's entitlement to any accrued scheduled permanent partial disability benefits awarded by the administrative law judge under Section 8(c)(13), 33 U.S.C. §908(c)(13), on remand from the Board. *See Hoskins v. Ingalls Shipbuilding, Inc.*, BRB No. 93-0585 (Feb. 27, 1996)(unpublished).<sup>2</sup>

Claimant's counsel sought an attorney's fee of \$3,031.25, representing 24.25 hours of services at \$125 per hour, and \$33 in expenses, for work performed before the administrative law judge in connection with this hearing loss claim. Employer filed objections to the fee. In a Supplemental Decision and Order, the administrative law judge reduced the number of hours sought in the fee petition by 7.5, reduced the hourly rate sought to \$110, and awarded claimant's counsel an attorney's fee of \$1,842.50, plus the requested expenses.

On appeal, employer challenges the administrative law judge's fee award, incorporating by reference the objections it made below into its appellate brief. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the fee award. Claimant has not responded to this appeal.

Employer contends that the fee awarded is excessive, maintaining that the case was routine and not complex. The administrative law judge considered the routine and uncomplicated nature of the instant case in reducing counsel's hourly rate from \$125 to \$110. We, therefore, reject employer's contention that the awarded fee must be further reduced on this criterion because employer has not satisfied its burden of showing that the administrative law judge abused his discretion in this regard. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *see generally Snowden v. Ingalls Shipbuilding, Inc.*, 25 BRBS 245 (1991)(Brown, J., dissenting on other grounds), *aff'd on recon. en banc*, 25 BRBS 346 (1992)(Brown, J., dissenting on other grounds).

We next reject employer's objections to the number of hours awarded by the administrative law judge, as it has not shown that the administrative law judge abused his discretion in this regard. *See Ross*, 29 BRBS at 42; *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General*

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<sup>1</sup>The heirs of decedent's estate were substituted for decedent in the proceedings below.

<sup>2</sup>The Board noted that since employer had paid benefits to the Special Fund under the administrative law judge's award, the Special Fund will be responsible for reimbursement of that amount in accordance with the administrative law judge's award of benefits on remand. *Hoskins*, slip op. at 4.

*Dynamics Corp.*, 13 BRBS 97 (1981). Employer's specific objection to counsel's charge of one-quarter hour for the preparation of each of several letters is rejected. 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)(table).

Employer's contentions which were not raised below will not be addressed for the first time on appeal.<sup>3</sup> See *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).

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

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<sup>3</sup>We note that inasmuch as claimant's counsel has established employer's liability for benefits payable to decedent's estate, claimant's counsel has successfully prosecuted the claim. 33 U.S.C. §928.