

BRB Nos. 93-1676
and 93-2434

THOMAS F. WHITE)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING, INCORPORATED)	DATE ISSUED:
)	
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, and the Compensation Order - Award of Attorney's Fee of N. Sandra Ramsey, District Director, 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 (91-LHC-1338) of Administrative Law Judge Richard D. Mills, and the Compensation Order - Award of Attorney's Fee (No. 6-11772) 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 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).

¹We hereby consolidate for purposes of decision employer's appeal of the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees, BRB No. 93-1676, with employer's appeal of the district director's Compensation Order-Award of Attorney's Fees, BRB No. 93-2434. *See* 20 C.F.R. §802.104.

Claimant's counsel sought an attorney's fee of \$3,383, representing 26 hours at \$125 per hour plus expenses, 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 \$2,035, representing 18.5 hours at an hourly rate of \$110, plus expenses of \$133. Claimant's counsel also sought an attorney's fee of \$934, representing 9.25 hours at \$100 per hour, plus expenses of \$9, for work performed before the district director. The district director awarded counsel a fee of \$512.50, representing 5.125 hours at an hourly rate of \$100. Employer appeals both the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees, BRB No. 93-1676, and the district director's Compensation Order - Award of Attorney's Fee, BRB No. 93-2434, incorporating by reference the arguments it made below into its appellate briefs. Claimant has not responded to either appeal.

Employer contends that the fees awarded by the administrative law judge and the district director are excessive in light of the routine and uncomplicated nature of the case. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved and the amount of benefits awarded. *See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). In the instant case, inasmuch as both the administrative law judge and the district director considered the complexity of the case in determining the applicable hourly rate, we reject employer's contention that the awarded fees must be further reduced on this basis.

Employer's assertion that the hours claimed by counsel in both fee petitions were excessive and unnecessary in light of the *de minimis* or nominal value of the claim is also rejected.² In making the fee award in this case, the administrative law judge considered this objection, and his finding that counsel's fee is not limited to the amount of compensation obtained accords with law. *See, e.g., Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993). In addressing employer's objection with regard to the amount of the award, the administrative law judge specifically stated that he was considering the necessity of the amount claimed in relation to the award, and he thereafter reduced the number of hours sought by 7.5. The district director also accounted for the amount of compensation obtained in determining that the \$100 hourly rate sought was reasonable and appropriate. Inasmuch as both the administrative law judge and the district director considered the issue of the amount of benefits awarded in relation to the fee requested in evaluating the fee petitions, we reject employer's assertion that the awarded fees should be further reduced on this basis. *See generally Rogers v. Ingalls Shipbuilding, Inc.*, 28 BRBS 89, 93 (1993)(Brown, J., dissenting).

²Although employer cites *Cuevas v. Ingalls Shipbuilding, Inc.*, BRB No. 90-1451 (Sept. 27, 1991)(unpublished), in support of its assertion that the fee awarded is excessive, the Board has held that unpublished cases should not be cited or relied on by the parties as they lack precedential value. *See Lopez v. Southern Stevedores*, 23 BRBS 295, 300 n.2 (1990). In addition, the Board's decision in *Cuevas* was based on the facts of that case and has no bearing on the fee awards herein. *See Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230, 236-237 (1993).

Employer also objects to counsel's method of billing in minimum increments of one-quarter hour in both fee petitions. The fee award made by the administrative law judge 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). Inasmuch, however, as the district director neglected to consider employer's objection regarding minimum quarter-hour billing and we are unable to ascertain from the administrative record before us whether the time claimed and awarded for review of routine correspondence is consistent with *Fairley* and *Biggs*, the case must be remanded for the district director to reconsider the fee petition in light of *Fairley* and *Biggs*.

Employer's remaining objections to the number of hours and hourly rate awarded are rejected, as it has not show that either tribunal abused its 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).³

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).

³We note the district director properly determined that employer was not liable for those fees incurred prior to employer's receiving formal notice of the claim from the district director on September 1, 1988, consistent with employer's objection below. *See generally Watkins v. Ingalls Shipbuilding Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.2d 209 (5th Cir. 1993); 33 U.S.C. §928(a), (c).

Accordingly, the Compensation Order - Award of Attorney's Fee of the district director is affirmed in part, and vacated in part, and the case is remanded for further consideration consistent with this decision. BRB No. 93-2434. The Supplemental Decision and Order Awarding Attorney Fees of the administrative law judge is affirmed. BRB No. 93-1676.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge