

WILLIAM M. GRAY)	
)	
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.

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-2001) 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's counsel sought an attorney's fee of \$3,504.75, representing 27 hours at \$125 per hour plus expenses, for work performed before the administrative law judge in connection with claimant's hearing loss claim. Employer filed objections to the fee and claimant's counsel filed a response to employer's objections. The administrative law judge awarded counsel a fee of \$1,911.25, representing 17.375 hours at an hourly rate of \$110, plus expenses of \$129.75. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant does not respond to employer's appeal.

Employer's objections to the number of hours and 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 is also 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 assertion that the hours claimed by counsel were excessive and unnecessary in light of the *de minimis* or nominal value of the claim is also rejected.¹ 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 amounts claimed in relation to the award, and he thereafter reduced the number of hours sought by 9.625. In this case, moreover, employer provided no benefits voluntarily and did not enter into any stipulations until the date of the hearing, and claimant's counsel's efforts before the administrative law judge resulted in his obtaining compensation for a 4.3 percent binaural hearing loss, interest, and future medical benefits. Employer has thus failed to meet its burden of establishing that the administrative law judge abused his discretion in this regard.

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).

¹Although 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 award herein. *See Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230, 236-237 (1993).

Accordingly, the Supplemental Decision and Order 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