

HENRY GOFF)
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 Claimant-Respondent)
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 v.) DATE ISSUED:
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 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-2834) 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 \$2,876.50, representing 22.75 hours at \$125 per hour plus \$32.75 in expenses, for work performed before the administrative law judge in connection with claimant's hearing loss claim. The administrative law judge considered employer's specific objections to the fee request, reduced the number of hours sought to 16.125, approved an hourly rate of \$110, and awarded claimant's counsel an attorney's fee of \$1,773.75, representing 16.125 hours at an hourly rate of \$110 plus the requested expenses of \$32.75. Employer appeals the administrative law judge's fee award, incorporating by reference the objections it made below into its appellate brief. Claimant has not filed a response brief.

We reject employer's contention that it should not be liable for any fees incurred after February 12, 1991, when it voluntarily paid claimant benefits. Pursuant to Section 28(b) of the Act, 33 U.S.C. §928(b), employer is liable for a fee after it voluntarily tenders or pays benefits if claimant

thereafter is successful in obtaining greater benefits than those tendered or paid. In this case, claimant succeeded in obtaining medical expenses after February 12, 1991, and therefore is entitled to an attorney's fee award for services rendered after that date payable by employer. *See Ahmed v. Washington Metropolitan Area Transit Authority*, 27 BRBS 24 (1993).¹

Employer also argues that the lack of complexity in the case mandates a reduction or reversal in the amount of the fee awarded to claimant's counsel. We disagree. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, Section 702.132, 20 C.F.R. §702.132, which provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved and the amount of benefits awarded. *See generally Thompson v. Lockheed Shipbuilding and Construction Co.*, 21 BRBS 94 (1988). As the administrative law judge specifically considered the complexity of the case in awarding an hourly rate of \$110, employer's assertion that the complexity of the case does not warrant the fee awarded may be rejected. Moreover, employer has not established that the administrative law judge abused his discretion in awarding an hourly rate of \$110, and we accordingly affirm the hourly rate awarded. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer also challenges the number of hours requested by claimant's counsel and approved by the administrative law judge for time spent in certain discovery-related activity, in trial preparation, and in preparing and reviewing various legal correspondence and documents contending the services were either unnecessary, excessive, or clerical in nature. After evaluating claimant's counsel's fee request in light of the regulatory criteria of 20 C.F.R. §702.132 and employer's objections, the administrative law judge disallowed a portion of the time sought by counsel and found the remaining itemized services to be reasonable and necessary. We decline to further reduce or disallow the hours approved by the administrative law judge, as employer's assertions are insufficient to meet its burden of proving that the administrative law judge abused his discretion in this regard. *See generally Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993); *Mijangos v. Avondale Shipyards, Inc.*, 19 BRBS 15 (1986), *rev'd on other grounds*, 948 F.2d 941, 25 BRBS 78 (CRT)(5th Cir. 1991).

Lastly, employer objects to claimant's counsel's billing method. Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour 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).

Additionally, 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

¹Moreover, contrary to employer's contention, this was not an uncontested case as employer did not pay medical benefits and claimant was fully successful in prosecuting the claim for medical expenses.

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