

BRB Nos. 91-1741
and 92-1240

ROBERT S. STEVENS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeals of the Order Granting Employer's Motion for Reconsideration and Supplemental Decision and Order Awarding Attorney's Fees of Richard D. Mills, Administrative Law Judge and the Compensation Order, Award of Attorney's Fee of N. Sandra Ramsey, District Director, United States Department of Labor.

John F. Dillon (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.
Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

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

PER CURIAM:

Employer appeals the Order Granting Employer's Motion for Reconsideration and Supplemental Decision and Order Awarding Attorney's Fees (88-LHC-1369) of Administrative Law Judge Richard D. Mills and the Compensation Order, Award of Attorney's Fee (Case No. 6-103054) 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

¹In an Order dated April 7, 1992, the Board consolidated BRB Nos. 91-1741 and 92-1240 for purposes of decision only.

is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock, Inc.*, 12 BRBS 272 (1980).

Claimant filed a claim for benefits under the Act, contending that he sustained a noise-induced, work-related binaural impairment. After the claim was referred for a hearing, employer paid claimant in April 1989 benefits for a 39 percent binaural impairment pursuant to Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13), and accepted responsibility for medical benefits under Section 7 of the Act, 33 U.S.C. §907. Thereafter, the parties, stating that no issues remained in dispute, filed a Joint Motion to Remand the case to the district director for appropriate disposition. In an Order dated April 13, 1989, the administrative law judge remanded this case to the district director.

Claimant's counsel filed a fee petition for work performed before the administrative law judge, requesting \$1,190 representing 7.75 hours of services rendered at \$150 per hour, plus \$27.50 in expenses. Employer filed no objections. In his Supplemental Decision and Order Awarding Attorney's Fees, the administrative law judge reduced the hourly rate to \$125, but otherwise allowed the fee requested, awarding claimant's counsel \$996.25, representing 7.75 hours of legal services at \$125, plus \$27.50 for expenses.

Employer filed a motion for reconsideration, asserting that it did not receive the fee petition, and it filed objections to the fee request. The administrative law judge granted the motion for reconsideration, vacated his prior order and reconsidered the fee petition in light of employer's objections and claimant's reply thereto. The administrative law judge reduced the hourly rate to \$110 and reduced two entries for the mailing of routine letters to one-quarter hour each. The administrative law judge otherwise allowed the fee requested, awarding claimant's counsel \$797.50, representing 7.25 hours of legal services at \$110 per hour, plus \$27.50 for expenses.

Claimant's counsel also filed a fee petition for work performed before the district director, requesting \$986.75, representing 9.5 hours of services rendered at \$100 per hour, plus \$36.75 in expenses. Employer thereafter submitted objections to counsel's fee request. In her Compensation Order, Award of Attorney's Fee, the district director, addressing the fee petition and employer's objections, found that the rate of \$100 per hour was reasonable and reduced the fee requested by three-quarters of an hour. She agreed with employer's objection that the time billed prior to June 23, 1987, the date of the district director's formal notice of the claim to employer is to be paid by claimant as a lien on his compensation. The district director awarded claimant's counsel a fee of \$925, representing 9 hours of legal services at \$100 per hour, plus expenses of \$16.75, holding employer liable for \$525 and claimant liable for \$400.

On appeal, employer, incorporating by reference the objections made below, contends that both the administrative law judge's and district director's attorney's fee awards are excessive and should be reduced because the case involved a routine, uncomplicated case. Employer also contends that the administrative law judge's fee award is excessive because the benefits received were

nominal and voluntarily paid, and it asserts that any amounts billed subsequent to April 3, 1989, the date employer fully paid claimant, should be assessed against claimant as there was no "successful prosecution" beyond this point. Claimant responds, asserting that both attorney's fee awards should be affirmed.

Contrary to employer's contention, this was not an uncontested claim, as employer paid no compensation or medical benefits until April 1989. We further reject employer's contention that the complexity of this case did not warrant the attorney's fees awarded by the administrative law judge and the district director. The complexity of the legal issues is but one factor to be considered when awarding an attorney's fee. *See* 20 C.F.R. §702.132. Both the administrative law judge and the district director considered this specific objection in setting counsel's hourly rate at \$110 and \$100 respectively. We therefore reject employer's contention that the awarded fees must be reduced further on this basis. Moreover, we reject employer's assertion that the awarded hourly rates do not conform to the reasonable and customary charges in the area where the claim arose. This allegation is insufficient to meet employer's burden of proving that the rates are excessive, and we affirm the rates awarded to counsel by the administrative law judge and district director. *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

We also reject employer's contention that the administrative law judge's fee award should be reduced because claimant's benefits were nominal. We need not address this contention as employer did not raise this argument before the administrative law judge and is not permitted to raise it 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 in part. part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994)(McGranery, J., dissenting)(Decision on Recon.); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993). We note, however, that benefits for a 39 percent hearing loss are not nominal.

Next, we reject employer's objections to various itemized entries. In its objections made before the administrative law judge and the district director, which employer has incorporated into its appellate brief, employer challenged various entries for which a fee was requested by claimant's counsel. We note that the administrative law judge and the district director ruled on the challenged entries, and we decline to disturb these rational determinations on appeal. *Maddon*, 23 BRBS at 62. Moreover, the administrative law judge rationally held employer liable for the one-half hour billed subsequent to April 3, 1989, when employer fully paid claimant, as reasonable "wrap-up" services. *See Nelson v. Stevedoring Services of America*, BRBS , BRB No. 88-3695 (June 28, 1995), slip op. at 10.

Lastly, employer contends that claimant's counsel improperly billed in minimum increments of one-quarter hour, contrary to the unpublished order 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). In this order, the Fifth Circuit stated that, generally, attorneys should bill no more than one-eighth hour for review of a one-page letter and one-quarter hour for writing a one-page letter. The Fifth Circuit recently stated that this fee order is considered to be circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (unpublished). The one-quarter hour charge on February 24, 1989, for review of a letter from the carrier regarding a medical appointment is excessive under this criteria, and we reduce the entry to one-eighth hour. The remaining entries awarded by the administrative law judge conform to the Fifth Circuit's guidelines. Counsel's fee petition for work performed before the district director level also conforms to these guidelines, as the fee petition states counsel billed in one-eighth hour increments for review of a one-page letter, unless additional time was required for file review or calendaring activity.

Accordingly, the administrative law judge's Order Granting Employer's Motion for Reconsideration and Supplemental Decision and Order Awarding Attorney's Fees is modified to reflect the disallowance of one-eighth of an hour, and is otherwise affirmed. BRB No. 91-1741. The district director's Compensation Order, Award of Attorney's Fees is affirmed. BRB No. 92-1240.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge