

BRB No. 92-1177

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

Appeal of the Compensation Order Award of Attorney's Fees of N. Sandra Ramsey, District Director, United States Department of Labor.

Lowry M. Lomax (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 Compensation Order Award of Attorney's Fees (6-120773) 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). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, and abuse of discretion or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for compensation under the Act, and was successful in obtaining benefits for his hearing loss. Claimant's counsel filed a Petition for Approval of Attorney's Fee, requesting 9.25 hours for services rendered before the district director, at a rate of \$100 per hour, plus \$58.25 in expenses. Employer filed objections to the fee petition. The district director issued an Order awarding counsel a fee for 9.25 hours of services at \$100 per hour, plus \$45 in expenses, for a total fee of \$960.<sup>1</sup> Finding, however, that employer is not liable for any charges prior to its

---

<sup>1</sup>We note that the number of hours (9.25) times the hourly rate (\$100) awarded plus \$45 in expenses equals \$970.

receipt of formal notice of the claim on February 2, 1989, the district director ordered employer to pay \$535 to counsel and ordered a lien on claimant's compensation in the remaining amount of \$425.<sup>2</sup> Employer appeals the district director's attorney's fee award, incorporating the objections it made below into its appellate brief. Claimant responds, urging affirmance.

On appeal, employer initially contends that the district director erred in holding it liable for one hour of services on January 4, 1988, for review of file and review of the referral of the claim to the administrative law judge. Claimant responds, contending that the date is a typographical error and that the correct date is March 23, 1990. Claimant states that the district director implicitly recognized that the services were performed after the date employer received formal notice of the claim since the entry refers to the claim's referral to an administrative law judge. Inasmuch as claimant's explanation is consistent with the district director's finding that employer is liable for this time, we reject employer's contention that claimant is liable for this time as a lien on his compensation.

Employer also contends that the fee award is excessive in view of the fact that this was a routine hearing loss claim involving undetailed form pleadings. 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 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 entering her fee award, the district director specifically took the regulatory criteria into account in determining that counsel's requested hourly rate of \$100 is reasonable and appropriate. *See Order at 1*. We therefore reject employer's contention that the fee should be reduced on this basis. Moreover, employer has not established that the district director abused her discretion in awarding an hourly rate of \$100, and we accordingly affirm the hourly rate awarded. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer also objects to counsel's use of the quarter-hour minimum billing method. In *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 90-4559 (5th Cir. July 25, 1990) (unpublished), the United States Court of Appeals for the Fifth Circuit stated that attorneys, generally, may not bill more than one-eighth hour for review of a one-page letter and one-quarter hour for preparation of a one-page letter. The Fifth Circuit subsequently stated in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (unpublished), that its fee order in *Fairley* is considered to be circuit precedent. The district director did not separately discuss this objection which employer raised before her. We, therefore, must vacate the district director's fee award and remand the case for consideration of counsel's fee petition in light of employer's objections and circuit precedent. *See generally Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995). On remand the district director also must recalculate the liability of each party in light of the mathematical errors. *See n. 1, 2, supra*.

---

<sup>2</sup>Based on the fee petition it appears that counsel requested a fee for 4.5 hours of services prior to February 2, 1989, and for 4.75 hours of services after the claim was referred to the administrative law judge.

Accordingly, the Compensation Order Award of Attorney's Fees of the district director is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this decision.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge