

BRB No. 92-1284

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

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

Rebecca J. Ainsworth (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Paul M. Franke, Jr. (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 Compensation Order Award of Attorney's Fee (Case No. 6-100387) 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 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 and 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 9.625 hours for services rendered before the district director, at a rate of \$100 per hour, plus \$13 in expenses. Employer filed objections to the fee petition. The district director issued an Order awarding counsel a fee of \$962.50 for 9.625 hours at a rate of \$100 per hour, disallowing the requested costs. Finding, however, that employer is not liable for any charges prior to its receipt of formal notice of the claim on February 13, 1987, the district director ordered employer to pay \$512.50 to counsel and ordered a lien on claimant's compensation in the remaining amount of \$450.

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 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 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 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.<sup>1</sup> *See Madden v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer also objects to the amount of time claimed on October 16, 1986, July 8, 1986, August 22, 1986, November 13, 1986, and November 14, 1986. Additionally, employer attached an affidavit to its objections, showing that counsel had billed for 26.5 hours on October 16, 1986, in cases not including this one. Although the district director did not specifically address these contentions, she did determine that claimant is liable for those attorney's fees which accrued before February 13, 1987. *See Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993). Because claimant, and not employer, is liable for the fees incurred before February 13, 1987, we decline to address employer's objections.

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. 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).

Next, employer objects to entries on April 20 and 29, 1987, May 8 and 21, 1987, June 15, 1987, December 2, 1987, February 24, 1988, and August 8, 1991, contending either that the time claimed is excessive or that the services performed are clerical in nature or both. Employer also contends that the entry on February 13, 1987, lacks specificity in contravention of the Act and

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<sup>1</sup>We also reject employer's reliance on the decision of Judge A.A. Simpson in *Cox v. Ingalls Shipbuilding, Inc.*, 88-LHC-3335 (Sept. 5, 1991). The decision of an administrative law judge in a different case is not binding upon the district director or the Board in this case. 33 U.S.C. §928(c); 20 C.F.R. §702.132.

regulations, and that counsel billed in excess of 24 hours on August 12, 1987 and December 2, 1987, for work in other cases so that entries on the dates should be disallowed. For the reasons stated in *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156 (1994), *modifying in part on other grounds on recon.* 28 BRBS 27 (1994), we reject employer's contention that the time claimed is clerical in nature. Furthermore, with the exception of the entries affected by the Fifth Circuit's decisions in *Fairley* and *Biggs*, employer has failed to show an abuse of discretion by the district director in awarding time for these services, having considered employer's objections. Thus, we decline to reduce or disallow these entries. *Watkins*, 26 BRBS at 182; *Mijangos v. Avondale Shipyards, Inc.*, 19 BRBS 15 (1986), *rev'd on other grounds*, 948 F.2d 941, 25 BRBS 78 (5th Cir. 1991).

Accordingly, the district director's Compensation Order Award of Attorney's Fee 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