

BRB No. 93-0180

RAY A. RUTLEDGE)	
)	
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.

John F. Dillon (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

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 Compensation Order Award of Attorney's Fee (Case No. 6-103058) 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 & 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 an Amended Petition for Approval of Attorney's Fee, requesting 9.75 hours for services rendered before the district director, at a rate of \$100 per hour, plus \$14.25 in expenses. Employer filed objections to the fee petition. The district director issued an Order awarding counsel a fee of \$975 for 9.75 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 May 22, 1987, the district director ordered employer to pay \$662.50 to counsel and ordered a lien on claimant's compensation in the remaining amount of \$312.50. Employer appeals the district director's attorney's fee award, incorporating the objections it

made below into its appellate brief. Claimant responds, urging affirmance.

Employer initially contends that the fee award is excessive in view of the fact that this was a routine hearing loss claim involving undetailed form pleadings.¹ 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. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer next contends that the time spent in certain discovery-related activity, and in preparing and reviewing various correspondence and legal documents was either unnecessary, excessive, or clerical in nature. After evaluating claimant's fee request in light of the regulatory criteria of 20 C.F.R. §702.132 and employer's objections, the district director found all of the services claimed to be reasonable and necessary. We decline to disturb this rational determination. *See Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). 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 services rendered on numerous dates are clerical in nature.

¹Employer also contends that the district director erred in holding it liable for claimant's attorney's fee, arguing that there was no successful prosecution of the claim because it voluntarily tendered benefits in an amount greater than the actual amount of compensation awarded. Employer alternatively argues that the awarded fee is excessive because the award of benefits is nominal. Employer failed to raise these contentions in its objections to the fee petition which it filed with the administrative law judge; thus, we will not address this contention since it is raised for the first time on appeal. *See 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 Productions Co.*, 21 BRBS 261 (1988).

Employer further avers that the entry on October 23, 1987, lacks specificity in contravention of the Act and regulations, and that counsel billed in excess of 20 hours on August 12, 1987, December 2, 1987 and July 26, 1988,² for work in other cases so that entries on those dates should be disallowed. Employer has failed to show an abuse of discretion by the district director in awarding time for these services. Thus, we decline to reduce or disallow these entries. *See Maddon*, 23 BRBS at 55; *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, we reject employer's contention that the time claimed after the case was referred to the administrative law judge should be disallowed. As these services relate to the oversight of medical care and to the "wrap-up" of the claim, the district director did not abuse her discretion in awarding fees for these services. *See generally Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

²Employer raises similar objections to entries on December 11 and 19, 1986. Inasmuch as the district director determined that claimant is liable for attorney's fees which accrued before May 22, 1987, *see Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993), we need not address employer's objections regarding these entries.