

BRB No. 93-1816

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

Appeal of the Supplemental Decision and Order - Awarding Attorney Fees of Quentin P. McColgin, 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-2423) of Administrative Law Judge Quentin P. McColgin 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, an abuse of discretion or not in accordance with the law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$3,278.25, representing 25.5 hours at \$125 per hour for services performed before the administrative law judge in connection with claimant's hearing loss claim and \$90.75 for expenses. The administrative law judge awarded counsel a fee of \$1,625, representing 16.25 hours at an hourly rate of \$100 and expenses in the amount of \$90.75. Employer appeals the administrative law judge's attorney fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant has not filed a response brief in this appeal.

Employer initially contends that the administrative law judge erred in holding it liable for

claimant's attorney's fee, arguing that there was no successful prosecution of the claim. We disagree. Under Section 28(b) of the Act, 33 U.S.C. §928(b), when an employer voluntarily pays or tenders benefits and thereafter a controversy arises over additional compensation due, the employer will be liable for an attorney's fee if the claimant succeeds in obtaining greater compensation than that paid or tendered by the employer. See *Ahmed v. Washington Metropolitan Area Transit Authority*, 27 BRBS 24 (1993); *Tait v. Ingalls Shipbuilding, Inc.*, 24 BRBS 59 (1990). In this case, although employer accepted liability for claimant's compensation prior to the transfer of the case to the administrative law judge, employer accepted liability for claimant's medical expenses at the formal hearing. See Decision and Order at 2-3. Thus, as claimant obtained additional benefits while this case was pending before the administrative law judge, employer is liable for an attorney's fee pursuant to Section 28(b); we therefore affirm the administrative law judge's finding that claimant's attorney is entitled to a fee award to be assessed against employer. See *Ingalls Shipbuilding, Inc. v. Director, OWCP (Baker)*, 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993); *Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61 (1991); *Geisler v. Continental Grain Co.*, 20 BRBS 35 (1987).

Employer's objections to the number of hours and hourly rate awarded are rejected, as it has not shown that the administrative law judge abused his discretion in this regard. See *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour also is rejected, as the administrative law judge's 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)(table).

Employer's contentions which were not raised below will not be addressed 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 Production Co.*, 21 BRBS 261 (1988).

Accordingly, the Supplemental Decision and Order - Awarding Attorney Fees of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge