

LEO NELSON BYRD)	
)	
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 Jeana F. Jackson, District Director, Office of Workers' Compensation Programs, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof, P.C.), Mobile, Alabama, for claimant.

Traci M. Castille (Franke, Rainey & Salloum, P.L.L.C.), 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 Fees (Case No. 6-128667) of District Director Jeana F. Jackson 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 contrary to law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim under the Act for a noise-induced work-related hearing loss. The administrative law judge awarded claimant compensation for a 28.8 percent binaural hearing impairment based on an average weekly wage of \$155.92, plus \$595.90 in interest for a total of \$6,583.42. In addition, claimant was awarded medical benefits.

While the claim was pending before the administrative law judge, claimant's attorney

submitted a fee petition for services rendered at the district director level between October 16, 1990, and June 5, 1992, requesting \$1,010 for 6 hours of legal services at \$150 per hour for Attorney Lattof, and 1 hour at \$110 per hour for Attorney Friend. Employer filed objections and claimant responded to employer's objections. The district director reduced the hourly rate requested to \$125 for Attorney Lattof, and to \$90 for Attorney Friend, but found the fee requested by counsel to be otherwise reasonable. Accordingly, she awarded claimant's counsel a fee of \$840, representing 6 hours of services at \$125 per hour and 1 hour at \$90. Employer appeals this award, incorporating by reference the objections it made below, and claimant responds, urging affirmance.

Employer first contends the fee awarded is excessive in light of the degree of claimant's success before the district director, and the routine, uncomplicated nature of the case. Additionally, employer contends the district director erred in awarding a fee based on the quarter-hour minimum billing method, as that method conflicts with the rulings 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). Because employer did not raise these contentions below, they will not be addressed 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 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).

After considering employer's remaining objections to the specificity of the entries, and the number of hours and hourly rates awarded, we reject employer's contentions, as it has not shown an abuse of discretion by the district director in this regard.¹ See *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988).

¹Although employer argued below that the fee requested by counsel was premature as no decision awarding benefits had been entered, this argument was rendered moot by the issuance of the administrative law judge's June 24, 1993, Decision and Order.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge