

MARY L. MOODY)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
_____INCORPORATED)	
)	
Self-Insured)	ORDER ON MOTION
Employer-Petitioner)	FOR RECONSIDERATION

Employer seeks reconsideration of the Board's decision in this case. As employer has raised no new arguments which were not considered in the Board's decision, *Moody v. Ingalls Shipbuilding, Inc.*, 27 BRBS 173 (1994)(Brown, J., dissenting), the motion for reconsideration filed by employer is DENIED. 33 U.S.C. §921(b)(5); 20 C.F.R. §§802.407(a), 802.409. Upon further review, we note that employer's arguments on appeal regarding the amount of the fee in relation to the benefits awarded were not raised in its objections before the administrative law judge¹ and accordingly should not have been addressed by the Board in its decision. *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 in part. part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Bullock]*, No. 94-40066 (5th Cir. Jan. 12, 1995). As employer's failure to raise this issue below is dispositive, the Board's discussion in the initial decision is *dicta*.

¹Employer asserted only that any fee should be limited to the difference between the amount of benefits obtained under Section 28(b), 33 U.S.C. §928(b). As the decision holds, this case is governed by Section 28(a), 33 U.S.C. §928(a).

Claimant's counsel has also filed a fee petition for work performed before the Board. Counsel seeks payment of \$862.90 representing 5.75 hours at \$150 per hour. Employer objects, asserting that the \$150 hourly rate sought is excessive and that a rate of \$75 to \$80 would be more appropriate. Employer also contends that the .50 hours claimed for review of the notice of appeal on June 26, 1990, is excessive, as is the 3.5 hours requested for review of employer's Petition for Review and preparation of claimant's response brief on July 30, 1992. Finally, employer asserts that the .5 hours charged on September 27, 1993, for review of the Decision and Order of the Benefits Review Board and file review is excessive.² Because claimant has successfully defended this appeal, his counsel is entitled to a fee reasonably commensurate with the necessary work performed before the Board. *See Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992). After review of counsel's fee petition and employer's objections thereto, we award the \$862.50 fee requested, as the amount requested is reasonable for the necessary work done. Thus, we award claimant's counsel a fee of \$862.50 to be paid directly by counsel to employer. 33 U.S.C. §928; 20 C.F.R. §802.203.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

²Contrary to employer's representation, the .5 hours claimed on June 26, 1990, included not only the time spent in reviewing the notice of appeal but also time spent in opening the file with regard to the appeal. Similarly, the 3.5 hours charged on July 30, 1992 was not, contrary to employer's suggestion, limited only to time expended for review of employer's Petition for Review and preparation of claimant's response brief. Rather, the time claimed also included review of the file, research for, and the revision of, the response brief and preparation of the transmittal letter to the Board.