

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

Appeal of the Supplemental Decision and Order Awarding Attorney's Fee and Costs of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

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 Supplemental Decision and Order Awarding Attorney's Fee and Costs (93-LHC-1718, 2788) of Administrative Law Judge Lee J. Romero, Jr., 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).

On October 17, 1991, an explosion at work resulted in claimant's complaints of headaches, nausea, and retro-orbital pain. Bilateral hearing loss was also recorded during the treatment of this injury. On August 12, 1992, claimant injured his left knee during the course of his employment for employer. Employer voluntarily paid claimant compensation for temporary total disability from August 14, 1992, to November 1, 1992, November 16, 1992, and from November 30, 1992, to March 29, 1993, for a total amount of \$9,696.30. Decision and Order at 2. Subsequently, claimant injured his left shoulder at home when his left knee allegedly gave way. On December 8, 1993, a formal hearing was conducted to resolve the contested issues of causation of the left shoulder injury,

nature and extent of disability due to the combined effects of the shoulder, left knee and head injuries, past and future medical benefits for the head injury, and claimant's average weekly wage. In his Decision and Order, the administrative law judge awarded claimant additional benefits for a 5 percent permanent partial knee impairment, 33 U.S.C. §908(c)(2), and for a 10.3 percent binaural hearing loss, 33 U.S.C. §908(c)(13), as well as medical benefits and interest on past due compensation owed.

Claimant's counsel subsequently submitted a fee petition to the administrative law judge requesting an attorney's fee of \$8,538.75, representing 63.25 hours of services rendered at a rate of \$135 per hour, plus expenses of \$320.85, for work performed before the administrative law judge in connection with this claim. Employer filed objections to the fee requested. Claimant's counsel responded and thereafter sought an additional fee of \$371.25, representing 2.75 hours of services at \$135 per hour. In a Supplemental Decision and Order, the administrative law judge, after considering the objections raised by employer, reduced the number of hours sought by counsel to 61.75, reduced the hourly rate sought to \$125, approved the additional 2.75 hours requested to respond to employer's objections and thereafter awarded claimant's counsel an attorney's fee of \$8,062.50, plus \$320.85 for expenses. On appeal, employer challenges the administrative law judge's fee award, incorporating by reference the objections it made below into its appellate brief. Claimant has not responded to this appeal.<sup>1</sup>

Employer avers that, since claimant obtained only a nominal gain in benefits, the attorney's fee awarded should be limited in accordance with *Hensley v. Eckerhart*, 461 U.S. 424 (1983), and *George Hyman Construction Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161 (CRT) (D.C. Cir. 1992). Initially, we note that, contrary to employer's argument that claimant's success in the instant case was "minimal," claimant obtained additional compensation of approximately \$11,000, *see* Employer's brief at 2, 5, as well as past medical benefits for treatment of his head injury, future medical benefits for treatment of a neuropsychological condition, and a hearing aid. In considering counsel's fee petition, the administrative law judge specifically addressed the regulatory criteria governing approval of an attorney's fee under the Act pursuant to 20 C.F.R. §702.132, which provides that the award of 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

---

<sup>1</sup>Prior to filing this appeal, claimant appealed the administrative law judge's Decision and Order Awarding Benefits. BRB No. 95-1167. Claimant subsequently filed a petition for modification with the administrative law judge; on September 18, 1995, the Board dismissed claimant's appeal and remanded the case for a decision on modification. *See* 33 U.S.C. §922. Employer has since appealed the administrative law judge's decision on modification. BRB No. 97-0571. Claimant thereafter requested that his appeal of the administrative law judge's initial Decision and Order be reinstated. In an Order dated January 27, 1997, claimant's request was granted, and the two appeals were consolidated for purposes of decision. Our disposition of employer's appeal of the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fee and Costs does not affect either of the pending appeals.

BRBS 434 (1989). Moreover, the administrative law judge specifically considered counsel's fee request in light of the decision of the Supreme Court in *Hensley*. See Supplemental Decision and Order at 3-4. The administrative law judge thereafter found there was a successful prosecution of the claim based on his award of benefits for a 5 percent permanent partial knee impairment, interest on unpaid compensation, and an enhancement in claimant's average weekly wage over the wage used by employer when calculating its prior voluntarily paid compensation benefits for temporary total disability. Thus, inasmuch as the administrative law judge considered this specific objection when addressing counsel's fee petition and his fee award is consistent with *Hensley*, we reject employer's contention that the fee must be further reduced on this basis.

Employer next objects to the number of hours and hourly rate awarded by the administrative law judge. We reject these contentions, as employer 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). Accordingly, the number of hours and hourly rate awarded by the administrative law judge are affirmed.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fee and Costs is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge