

BRB No. 93-125A

WALTER L. WHITE)	
)	
Claimant-Respondent)	
)	
v.)	
)	DATE ISSUED:_____
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney's Fee on Remand of James W. Kerr, Jr., 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's Fee on Remand (88-LHC-3341) of Administrative Law Judge James W. Kerr, 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 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. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sustained a noise-induced hearing loss during the course of his employment with employer. On December 5, 1986, before the case was referred to the Office of Administrative Law Judges (OALJ), employer began payment for a 26.6 percent binaural impairment. On December 9, 1988, the case was remanded to the district director for an appeal to the Board on the applicability of Section 14(e), 33 U.S.C. §914(e). The Board remanded the case to the administrative law judge for consideration of employer's liability for a Section 14(e) penalty. *White v. Ingalls Shipbuilding, Inc.*, BRB No. 88-4193 (March 16, 1992). On remand, the administrative law judge determined that employer failed to file a timely notice of controversion in this case. Consequently, he held employer liable for a Section 14(e) penalty on compensation due between September 15 and December 4,

1986. Decision and Order on Remand at 2-3.

Thereafter, claimant petitioned for an attorney's fee of \$547.50, representing 4.38 hours of services at \$125 per hour, plus \$15 in expenses. The administrative law judge approved the request in its entirety. Supp. Decision and Order. Employer appeals its liability for an attorney's fee as well as the amount of the award.¹

Employer first contends it is not liable for an attorney's fee because it voluntarily paid benefits to claimant prior to the referral of this case to the OALJ. Although employer correctly asserts that it paid all compensation due claimant, it controverted its liability for a Section 14(e) penalty, which claimant was subsequently awarded while the case was before the administrative law judge. As claimant established employer's liability for a Section 14(e) penalty, he obtained additional benefits and is entitled to an attorney's fee. 33 U.S.C. §928(b); *Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61 (1991) (Decision on Remand); *Smelcer v. National Steel & Shipbuilding Co.*, 16 BRBS 117 (1984).

Next, employer contends the administrative law judge awarded an attorney's fee which is excessive given claimant's nominal award of a Section 14(e) penalty. The Board has consistently rejected employer's contention that the amount of the fee awarded must be based solely on the monetary difference between the amount of benefits tendered and the amount of benefits awarded. *See, e.g., Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994) (McGranery, J., dissenting) (Decision on Recon.), *appeal dismissed*, No. 94-40920 (5th Cir. Sept. 20, 1995); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993). Moreover, claimant obtained a Section 14(e) penalty and successfully prosecuted the only issue before the administrative law judge on remand. Therefore, his claim was fully successful. *See Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Rogers v. Ingalls Shipbuilding, Inc.*, 28 BRBS 89 (1993) (Brown, J., dissenting). Moreover, as the administrative law judge considered the amount of benefits awarded in rendering a reasonable fee award, we reject employer's contention that the fee must be reduced based on this criterion.

Employer also argues that the lack of complexity of the instant case mandates a reduction in the amount of the fee awarded to claimant's counsel. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work performed and shall take into account the quality of the representation, the complexity of the issues, 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). While the complexity of the issues should be considered by the administrative law judge, it is only one of the relevant factors. *See generally Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). In this case, the administrative law judge determined that an hourly rate of \$125 is reasonable. As employer has not satisfied its burden of showing that the administrative law judge abused his discretion in awarding a fee based on this hourly rate, we affirm the administrative law

¹By Order dated December 30, 1983, the Board dismissed claimant's appeal, BRB No. 93-125, upon his request.

judge's finding. *Watkins*, 26 BRBS at 179; *LeBatard v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 10 BRBS 317 (1979).

Employer challenges counsel's use of the quarter-hour minimum billing method. The United States Court of Appeals for the Fifth Circuit has recently held that its unpublished fee order rendered in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990), is considered circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (table). In *Fairley*, the court held that attorneys, generally, may not charge more than one-eighth hour for reading a one-page letter and one-quarter hour for preparing a one-page letter. *See Fairley*, slip op. at 2. Contrary to employer's assertion, counsel submitted a fee petition in compliance with these decisions; therefore, these entries need not be reduced. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Finally, employer makes specific contentions regarding time allowed for review of employer's brief on remand and of the Decision and Order, and for preparation and filing of claimant's brief on remand. The administrative law judge rejected employer's objections and found that four hours is a reasonable amount of time for these tasks. Because employer has failed to show an abuse of discretion by the administrative law judge in awarding time for these services, having specifically considered employer's objections, we reject these item-specific contentions and decline to further reduce the administrative law judge's award. *See generally Watkins*, 26 BRBS at 182; *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).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge