

BRB No. 93-2183

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

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of A.A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

Michael G. Lattot, Sr. (Lattot & Lattot, P.C.), Mobile, Alabama, for claimant.

Traci Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (92-LHC-1468) of Administrative Law Judge A.A. Simpson, 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).

Claimant sought benefits for a work-related hearing loss. Claimant underwent an audiometric examination on June 25, 1991, which revealed a 35.9 percent binaural noise-induced hearing loss. Claimant also underwent audiometric testing on February 27, 1992, that was interpreted by Dr. McDill as showing a 21.3 percent binaural hearing loss. After the case had been transferred to Office of Administrative Law Judges to resolve the disputed issues, but prior to the hearing, the parties reached a compromise settlement, which was approved by the administrative law judge. Under the settlement, claimant received compensation, including interest and penalties, in the sum of \$7,700. In addition, employer agreed to pay continuing medical benefits.

Claimant's counsel subsequently filed a fee petition for work performed before the administrative law judge, requesting \$2,882.50 representing 17.75 hours of services at \$150 per hour for lead counsel, and 2 hours of services by an associate at \$110 per hour. In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge addressing employer's objections to the fee requested, reduced the hourly rate sought to \$110 for the senior attorney and \$100 for the junior attorney and reduced a number of the entries. The administrative law judge thus awarded claimant's counsel a fee in the amount of \$1,072.25, representing 8 3/8 hours of legal services at the rate of \$110 per hour, and 1 1/2 hour of legal services at the rate of \$100 per hour.

On appeal, claimant's counsel contends that the administrative law judge erred in determining a reasonable hourly rate, in reducing a number of entries for reviewing the file, and in rejecting counsel's minimum quarter-hour billing method. Employer responds, urging affirmance of the administrative law judge's Supplemental Decision and Order.

Initially, claimant challenges the reductions made in the hourly rates sought. Specifically, claimant asserts that the administrative law judge erred in reducing the hourly rate sought by claimant's lead counsel to \$110, since the facts and legal issues in the instant case were unique and complex, and the rate awarded is not commensurate with counsel's qualifications.

The complexity of legal issues is but one factor to be considered when awarding an attorney's fee. *See* 20 C.F.R. §702.132; *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). In the instant case, the administrative law judge specifically considered the complexity of the legal issues, as well as claimant's lead counsel's qualifications, in finding that an hourly rate of \$110 was commensurate with the services performed. Inasmuch as claimant's assertions that counsel's qualifications require higher hourly rates are insufficient to meet his burden of proving the hourly rates awarded by the administrative law judge were unreasonable, we affirm the rates awarded by the administrative law judge.<sup>1</sup> *See Ferguson v. Southern States Cooperative*, 27 BRBS 16 (1993); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993).

Claimant next contends that the administrative law judge erred in reducing the hours requested in the fee petition. Specifically, claimant contends that the number of hours requested were not excessive, and that billing for review of the case file should be appropriately compensable. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, Section 702.132, 20 C.F.R. §702.132, which provides that 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 Ross v. Ingalls*

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<sup>1</sup>We reject claimant's reliance on fee awards issued by the administrative law judge in other cases. The amount of an attorney's fee award lies within the discretion of the body awarding the fee, and the decision of an administrative law judge regarding the amount of a fee in one case is not binding precedent on another body, or the same administrative law judge, in a different case. 33 U.S.C. §928(c).

*Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989).

In his Supplemental Decision and Order, the administrative law judge reduced the time sought for review of pleadings, preparation of discovery, and telephone conferences, as well as time sought for review of the case file. In each instance, the administrative law judge set forth the rationale upon which he relied in reducing the hours sought by counsel. Thus, we hold that claimant's assertions on appeal are insufficient to meet his burden of proving that the administrative law judge abused his discretion in reducing the number of requested hours in the fee petition. See *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Lastly, claimant asserts that the administrative law judge erred in following the decision 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 thus rejecting counsel's method of quarter-hour billing. In *Fairley*, the Fifth Circuit stated that, generally, attorneys should charge no more than one-quarter of an hour for preparation of a one-page letter, and one-eighth of an hour for review of a one-page letter. The Fifth Circuit has recently held that its unpublished fee order in *Fairley* is considered circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table). Accordingly, the administrative law judge's reductions in time sought by counsel pursuant to *Fairley* are affirmed.

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge