

BRB No. 98-1096

PAUL WILLIS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED: <u>April 27, 1999</u>
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

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

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (91-LHC-571) of Administrative Law Judge Clement J. Kennington 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 filed a claim for benefits under the Act based on an alleged hearing loss. On November 17, 1997, the administrative law judge issued his Decision and Order Approving Compromise Settlement, under which claimant received a total of \$2,739.50, consisting of \$1,239.50 in compensation benefits and \$1,500 for medical benefits. Claimant's counsel sought an attorney's fee of \$1,505 representing 7.1 hours at \$175 per hour for Attorney Latoff and 2.1 hours at \$125 per hour for Attorney Friend, for work performed before the administrative law judge. The administrative law judge awarded counsel a fee of \$1,262.50, representing 6.75 hours at an hourly rate of \$150 for Attorney Latoff and 2 hours at an hourly rate of \$125 for Attorney Friend. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Initially, we note that employer objects to the administrative law judge's award of a fee for one hour for discovery. Employer's objection is rejected, as it has not shown that the administrative law judge abused his discretion. 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). In addition, we reject employer's argument that the fee awarded utilized quarter-hour billing, contrary to *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. Jul. 25, 1990) (unpublished). See also *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (table). Employer alleges that no more than .125 an hour should be allowed for the entries of April 10, 1997, May 14, 1997, May 20, 1997, and September 19, 1997. The administrative law judge considered each of these entries, reduced the charge of May 14, 1997 to .2 hours, and approved the remainder as reasonable and necessary. Furthermore, we reject employer's contention that the administrative law judge should not have awarded any fee after October 14, 1997, when employer alleges that it "tendered" the settlement sum in writing to claimant. Employer may be held liable for reasonable "wind-up services" after it has agreed to pay benefits. See *Everett v. Ingalls Shipbuilding, Inc.*, 32 BRBS 279 (1998), *aff'd on recon. en banc*, ___ BRBS ___, BRB No. 98-492 (March 26, 1999). The administrative law judge specifically considered the entries after October 14, 1997, eliminated charges for November 10, 1997, and reduced the request for a fee on October 30, 1997 from .3 an hour to .15. In all other respects, he approved the 2.95 hours requested; accordingly, he found the remainder of the "wind-up" services to be reasonable. As employer has failed to show an abuse of discretion by the administrative law judge in the foregoing cases, we reject employer's item-specific contentions and decline to reduce further these aspects of the administrative law judge's award. See *Pozos v. Army & Air Force Exchange Service*, 31 BRBS 173 (1997); *Ross*, 29 BRBS at 42.

Employer next challenges the hourly rate awarded of \$150 for Attorney Lattof and \$125 for Attorney Friend. Specifically, employer asserts that the lack of complexity of the instant case, the geographic region where the case arose and the prevailing reasonable and customary charges mandates a reduction in the fee to an hourly rate of \$110 for Attorney Lattof and \$90 for Attorney Friend. We reject employer's contention. In this case, the administrative law judge specifically stated that in awarding the fee he took into consideration the nature of the case, the experience of the attorneys, and the quality of the representation. Accordingly, employer has not satisfied its burden of showing that the administrative law judge abused his discretion in setting the hourly rate. See *Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134 (CRT) (10th Cir. 1997); *Ross*, 29 BRBS at 44.

Finally, employer contends that the administrative law judge erred in not explicitly considering the degree of claimant's success in entering the attorney's fee award. The amount of the fee awarded should reflect claimant's success in achieving the claims asserted, see *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *George Hyman Const. Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161 (CRT) (D.C. Cir. 1992), and it is error for the administrative law judge not to address this issue if it is properly raised below. As employer raised this issue below, and the administrative law judge did not discuss it, the case must be remanded for him to do so.

Accordingly, the Decision and Order Awarding Attorney Fees is vacated, and the case is remanded for the administrative law judge to address whether the award is reasonable in light of the results achieved. In all other respects, it is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge