

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

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Quentin P. McColgin, 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 Fees (89-LHC-447) of Administrative Law Judge Quentin P. McColgin 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 and Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim under the Act for a noise-induced work-related hearing loss based upon the results of an audiogram dated September 23, 1986. Employer voluntarily paid claimant benefits for a 43.94 percent binaural impairment based on an average weekly wage of \$416. 33 U.S.C. §908(c)(13). In his Decision and Order dated October 15, 1990, the administrative law judge initially denied claimant's request for additional compensation under Section 8(c)(13). Additionally, the administrative law judge determined that he lacked the authority to render a finding as to whether employer is liable for a ten percent penalty pursuant to 33 U.S.C. §914(e). The administrative law judge, however, determined

that claimant is entitled to reimbursement for the reasonable expenses incurred in connection with his initial hearing evaluation by Dr. Roberts.¹

Thereafter, claimant's counsel submitted a petition for an attorney's fee for work performed before the administrative law judge, requesting a fee of \$3,407.50, representing 27 hours at \$125 per hour, plus expenses of \$32.50. Employer filed objections, to which claimant replied. In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge, after consideration of employer's objections, awarded a fee of \$2,000 for 20 hours at \$100 per hour, plus the requested expenses. On appeal, employer challenges the administrative law judge's award of an attorney's fee, incorporating by reference the objections it raised below into its appellate brief. Claimant has not responded to this appeal.

Employer initially contends that the administrative law judge erred in holding it liable for claimant's attorney's fee, arguing that there was no successful prosecution of the claim because the administrative law judge did not award claimant any compensation over that which employer voluntarily paid. We disagree. Under Section 28(b), when an employer voluntarily pays or tenders benefits and thereafter a controversy arises over additional compensation due, the employer will be liable for an attorney's fee if the claimant succeeds in obtaining greater compensation than that agreed to by the employer. 33 U.S.C. §928(b). *See, e.g., Tait v. Ingalls Shipbuilding, Inc.*, 24 BRBS 59 (1990); *Kleiner v. Todd Shipyards Corp.*, 16 BRBS 297 (1984). In the instant case, although employer paid claimant compensation for his hearing impairment and agreed to pay medical benefits prior to the hearing, employer continued to dispute claimant's entitlement to a Section 14(e) assessment, as well as medical expenses incurred in connection with his initial hearing evaluation by Dr. Roberts. Thus, a controversy remained even after employer voluntarily paid compensation. The administrative law judge's failure to render a finding with regard to Section 14(e) was addressed by the Board on appeal, which held that claimant is entitled to a Section 14(e) assessment as a matter of law. *See Ramsey v. Ingalls Shipbuilding, Inc.*, BRB No. 91-355 (June 29, 1992)(unpublished). As claimant was ultimately successful in establishing his rights to a Section 14(e) assessment and reimbursement for medical expenses resulting from Dr. Roberts' initial evaluation over employer's objections, this additional compensation is sufficient to support an award of an attorney's fee payable by employer pursuant to Section 28(b). *See Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61 (1991) (decision on remand). Contrary to employer's contention, the amount of the fee is not limited to the amount of additional compensation gained under Section 28(b). *Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994)(McGranery, J., dissenting)(decision on recon.).

¹The administrative law judge also noted employer's acceptance to provide continuing medical benefits to claimant.

Employer's objections to the number of hours and hourly rate are rejected, as it has not been shown that the administrative law judge abused his discretion in this regard.² *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). Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour also is rejected, as the administrative law judge considered this objection, and his award conforms to the criteria set forth in the decisions 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 *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

²We decline to address employer's contentions regarding the amount of the fee in light of the nominal amount of benefits as this issue was not raised before the administrative law judge. *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 mem. sub. nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Clophus v. Amoco Productions Co.*, 21 BRBS 261 (1988).