

BRB Nos. 93-178
and 93-1113

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

Appeals of the Supplemental Decision and Order Awarding Attorney Fees of A.A. Simpson, Jr., Administrative Law Judge, United States Department of Labor, and the Compensation Order-Award of Attorney's Fee of N. Sandra Ramsey, District Director, Office of Workers' Compensation Program, United States Department of Labor.

John F. Dillon (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

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 (90-LHC-3237) of Administrative Law Judge A.A. Simpson, Jr., and the Compensation Order-Award of Attorney's Fee (6-102852) of District Director N. Sandra Ramsey 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 law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On December 31, 1986, claimant filed a claim for occupational hearing loss benefits under the Act against employer. The issues could not be resolved administratively and the matter was referred to the Office of Administrative Law Judges for a formal hearing. The

administrative law judge awarded claimant compensation for a 3.55 percent binaural impairment pursuant to Section 8(c)(13)(B) of the Act, 33 U.S.C. §908(c)(13)(B), based upon an average weekly wage of \$740. The administrative law judge also awarded claimant interest, medical benefits, and an assessment under Section 14(e) of the Act, 33 U.S.C. §914(e).

Subsequent to the issuance of the administrative law judge's Decision and Order, claimant's attorney filed a fee petition for work done at the administrative law judge level, requesting \$3,068.25, representing 24.25 hours of services at \$125 per hour, plus expenses of \$37. Employer filed objections. In a Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge reduced the hourly rate requested, awarding \$100 per hour to Lowry Lomax, and awarding attorneys Ainsworth and Dillon an hourly rate of \$80 for work performed in 1989, \$85 for work performed in 1990, \$95 for work performed in 1991, and \$100 for work performed in 1992.¹ The administrative law judge next disallowed 10.875 of the 24.25 hours requested, and awarded claimant's counsel a fee of \$1,260.13, representing 4.75 hours at \$85 per hour, 8.625 hours at \$95, and \$37 in expenses.

Claimant's attorney also submitted a fee petition for services rendered at the district director level between October 16, 1986, and June 30, 1992, requesting \$997 for 9.63 hours of legal services at \$100 per hour plus \$34 in expenses. Employer filed objections and claimant replied. The district director disallowed .75 of the hours claimed but otherwise found the fee requested reasonable. Accordingly, the district director awarded counsel a fee of \$913, representing 8.88 hours of services at \$100 per hour and \$25 in expenses.²

Employer appeals both the administrative law judge Supplemental Decision and Order Awarding Attorney Fees, BRB No. 93-1113, and the Compensation Order Award of Attorney's Fee of the district director, BRB No. 93-0178, incorporating by reference the

¹We note that no services were performed by Attorney Lomax at the administrative law judge level.

²The district director determined that claimant was liable for the \$388 in fees incurred prior to May 7, 1987, the date of the district director's formal notice of claim to employer, and that employer was liable for the remaining \$575.

arguments it made below into its appellate briefs.³ Claimant, incorporating his reply brief below, responds, urging affirmance of the district director's fee award. Claimant does not respond to employer's appeal of the administrative law judge's fee award.

³By Order dated April 6, 1993, the Board consolidated these appeals for purposes of decision. 20 C.F.R. §802.104.

We initially reject employer's contention that the administrative law judge erred in holding it liable for claimant's attorney's fee because there was no successful prosecution of the claim. In this case, up until the time of the hearing employer contested liability for disability and medical benefits, and for penalties under Section 14(e). As claimant ultimately prevailed in establishing his right to a 3.55 percent binaural hearing impairment, a Section 14(e) assessment, and medical benefits, his counsel was successful in establishing his right to compensation which employer had denied. The administrative law judge's finding that claimant's attorney is entitled to a fee payable by employer is therefore affirmed. See 33 U.S.C. §928(a); see generally *Powers v. General Dynamics Corp.*, 20 BRBS 119 (1987); *Morgan v. General Dynamics Corp.*, 16 BRBS 336 (1984).

Employer also contends that the fee awards are excessive given the routine nature of the claim. 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 done, the complexity of the legal issues involved and the amount of benefits awarded. See generally *Parrott v. Seattle Joint Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). In the present case, both the administrative law judge and the district director considered this factor in determining the applicable hourly rates. We therefore reject employer's contention that the awarded fee must be further reduced on this basis. See *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer's objections to counsel's method of billing in minimum increments of one-quarter hour before the administrative law judge and to specific itemized entries on various dates involving the preparation or review of routine correspondence are also rejected; 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]*, No. 94-40066 (5th Cir. Jan. 12, 1995) (unpublished). Employer's objections to specific one-quarter hour entries claimed before the district director similarly must fail because the contested entries are not inconsistent with *Fairley* and *Biggs*.

After considering employer's remaining objections to the number of hours awarded and to the hourly rate, we reject these contentions, as employer has not shown that the district director or administrative law judge abused his or her discretion in this regard. See *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Employer's contentions which were not raised below will not be addressed for the first time on appeal. *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 Production Co.*, 21 BRBS 261 (1988).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees, BRB No. 93-1113, and the district director's Compensation Order-Award of Attorney's Fee, BRB No. 93-0178, are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge