

BRB No. 90-2308A

AUBREY KNOX	)	
	)	
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 and the Supplemental Decision and Order Awarding Additional Attorney Fees of Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

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

Martin J. Nussbaum, Jr. (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 and the Supplemental Decision and Order Awarding Additional Attorney Fees (88-LHC-2217) of Administrative Law Judge Kenneth A. Jennings 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 under the Act seeking benefits for a noise-induced hearing loss. While the case was pending before the Office of Administrative Law Judges, claimant and employer filed Motions for Summary Judgment. The administrative law judge granted claimant's motion and awarded compensation by order dated December 8, 1988. He subsequently denied the Motion for Reconsideration filed by the Director, Office of Workers' Compensation Programs. Thereafter, the case was remanded to the district director for appropriate disposition.

Claimant's counsel sought an attorney's fee of \$775, representing 7.75 hours at \$100 per hour, for work performed before the administrative law judge in connection with claimant's hearing loss claim. In his Supplemental Decision and Order, the administrative law judge awarded counsel his requested fee of \$775, plus expenses of \$12.75. Counsel thereafter sought an additional fee in the amount of \$100, representing one hour of work performed at an hourly rate of \$100; this request was approved by the administrative law judge in a Supplemental Decision and Order Awarding Additional Attorney Fees dated June 6, 1989.

Employer appeals the administrative law judge's fee award, incorporating by reference the objections it made below into its appellate brief.<sup>1</sup> Claimant responds, urging affirmance of the fee award.<sup>2</sup>

Employer initially challenges the hourly rate awarded to counsel by the administrative law judge. In the instant case, the administrative law judge, in accordance with 20 C.F.R. §702.132, considered the quality of counsel's representation, the work performed, the complexity of the case, the benefits awarded, and the risk of loss in finding that the hourly rate requested by counsel is reasonable and appropriate. As employer's mere assertion that the awarded rate does not conform to the reasonable and customary charges in the area where this claim arose is insufficient to meet its burden of proving that the rate is excessive, we affirm the hourly rate awarded by the administrative law judge. *See Welch v. Pennzoil Co.*, 23 BRBS 395 (1990); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

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<sup>1</sup>By Order dated December 30, 1993, the Board dismissed as abandoned the appeal of the Director, Office of Workers' Compensation Programs. BRB No. 90-2308.

<sup>2</sup>Claimant's contention that employer should be liable for interest on the attorney's fee awarded by the administrative law judge pursuant to *Guidry v. Booker Drilling Co., (Grace Offshore Co.)*, 901 F.2d 485, 23 BRBS 82 (CRT)(5th Cir. 1990) is rejected for the reasons stated in *Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61, 65 (1991)(Decision on Remand). *See also Hobbs v. Stan Flowers Co., Inc.*, 18 BRBS 65 (1986), *aff'd sub. nom. Hobbs v. Director, OWCP*, 820 F.2d 1528 (9th Cir. 1987).

Employer next contests its liability for the number of hours awarded by the administrative law judge. In this regard, employer challenges, *inter alia*, the number of hours requested by counsel as well as counsel's minimum quarter-hour billing method.<sup>3</sup> In the instant case, the administrative law judge summarily found, without discussion or explanation, that the time and charges requested by counsel for services and expenses were necessary and reasonable. The administrative law judge's failure to set forth and address employer's specific objections to counsel's fee petition makes it impossible for the Board to apply its standard of review. *See generally Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). Accordingly, we vacate the number of hours awarded by the administrative law judge and remand the case to the administrative law judge. On remand, the administrative law judge must address employer's specific objections, make appropriate findings, and provide an explanation for the reasons and basis for his ultimate determination.

Accordingly, the Supplemental Decision and Order Awarding Attorney Fees and the Supplemental Decision and Order Awarding Additional Attorney Fees of the administrative law judge is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

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<sup>3</sup>The United States Court of Appeals for the Fifth Circuit has held that its unpublished fee order rendered in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990) (unpublished), is considered circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995) (unpublished). 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.