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| JIMMIE RODGERS |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) |) |
| INGALLS SHIPBUILDING, |) | DATE ISSUED: |
| INCORPORATED |) | |
| |) | |
| 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.

Rebecca J. Ainsworth (Maples and Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Paul M. Franke, 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 (89-LHC-2635) 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 & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim under the Act seeking benefits for a noise-induced occupational hearing loss. Prior to the scheduled hearing in this case, the parties entered into an agreement whereby employer accepted liability for claimant's medical benefits and paid claimant \$399.81 in disability compensation for a .62 percent binaural hearing loss. Subsequently, the parties submitted a Joint Motion to Remand the case to the district director, which was granted by the administrative law judge in an Order dated May 30, 1991.

Thereafter, claimant's counsel submitted a fee petition to the administrative law judge, requesting \$2,487.25, representing 19.75 hours of services at \$125 per hour and \$18.50 in expenses. Employer filed objections to the fee. Claimant replied, and also requested an additional one-hour fee for time spent in defending the fee petition. The administrative law judge, addressing employer's

objections, disallowed 5.25 of the hours sought and reduced the hourly rate requested to \$100. Accordingly, he awarded counsel an attorney's fee of \$1,450, representing 14.5 hours of services at \$100 per hour plus the requested expenses.

On appeal, employer challenges the administrative law judge's fee award on various grounds, incorporating by reference the objections it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer initially contends that the fee awarded is excessive, arguing that consideration of the quality of the representation provided, the complexity of the issues involved, and the amount of benefits obtained mandates a complete reversal or at least a substantial reduction of the fee awarded. We need not address these arguments, as they are being raised by employer 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 in pertinent part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994) (McGranery, J., dissenting) (Decision on Recon.); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993). We note, however, that the administrative law judge explicitly considered the complexity of the case and the quality of the representation provided in determining the applicable hourly rate. While employer also argues that the \$100 hourly rate awarded is excessive and that an hourly rate of \$75 to \$80 would be more appropriate, we affirm the rate awarded as employer has not established an abuse of discretion in this regard.¹ See *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

Employer additionally challenges the number of hours requested by claimant's counsel and approved by the administrative law judge.² In considering counsel's fee petition, the administrative law judge addressed each of employer's specific objections, and disallowed 5.25 of the requested hours. Employer's assertions on appeal are insufficient to meet its burden of proving that the administrative law judge abused his discretion in this regard; thus, we decline to further reduce or disallow the hours approved by the administrative law judge.³ See *Maddon*, 23 BRBS at 55; *Cabral*

¹We note that employer attached a copy of an article from a Mississippi Defense Lawyers Association newsletter to its objections raised below; this article, however, does not support employer's contention that the fee awarded in the instant case was unreasonable.

²We reject employer's argument that the administrative law judge must base his fee award in this case upon the decision rendered by another administrative law judge in *Cox v. Ingalls Shipbuilding, Inc.*, 88-LHC-3335 (Sept. 5, 1991), for the reasons stated in *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, *modifying in part on recon.* 28 BRBS 27 (1994). 33 U.S.C. §928(c).

³Although employer argues in its Petition for Review that the administrative law judge erred in allowing the 3.125 hours of services claimed after employer voluntarily paid all benefits due on March 20, 1991, we need not address this argument which employer has raised for the first time on appeal. *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993)(*en banc*)(Brown and McGranery,

v. General Dynamics Corp., 13 BRBS 97 (1981).⁴

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

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).

⁴Employer cites *Cuevas v. Ingalls Shipbuilding, Inc.*, BRB No. 90-1451 (Sept. 27, 1991) (unpublished), in support of its assertion that the fee awarded is excessive. The Board has held that unpublished cases should not be cited or relied upon by the parties as they lack precedential value. See *Lopez v. Southern Stevedores*, 23 BRBS 295, 300 n.2 (1990).