

BRB No. 92-2048

ELBERT CANNON)	
)	
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.

Rebecca J. Ainsworth (Maples and 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 (89-LHC-824) 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 hearing loss. The parties stipulated that claimant's average weekly wage is \$607.92, and the administrative law judge awarded claimant benefits for a 3.9 percent binaural impairment pursuant to Section 8(c)(13)(B) of the Act, 33 U.S.C. §908(c)(13)(B).

Thereafter, claimant's counsel submitted a fee petition to the administrative law judge, requesting an attorney's fee of \$3,328.75, representing 26 hours of services at \$125 per hour and

\$78.75 in expenses. Employer filed objections to the fee. Claimant replied, and sought a fee for an additional hour of services. In a Supplemental Decision and Order, the administrative law judge reduced the number of hours sought by 8, reduced the hourly rate sought to \$100, and awarded claimant an attorney's fee of \$1,800, 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 made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer contends that the fee awarded is excessive, maintaining that the case was routine and uncontested. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, Section 702.132, 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 Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). In the instant case, the administrative law judge considered the complexity of the case in reducing counsel's requested hourly rate from \$125 to \$100. Contrary to employer's contention, moreover, this was not an uncontested case as employer did not voluntarily pay compensation.¹ We, therefore, reject employer's contention that the awarded fee must be further reduced on this basis.

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 employer's specific objections, and reduced the number of hours requested by 8. 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. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

We also reject employer's assertion that the awarded hourly rate is excessive. The administrative law judge determined that the hourly rate of \$125 sought by claimant's counsel was excessive, and awarded counsel an hourly rate of \$100, finding this rate to be fair and reasonable

¹Employer also contends that the awarded fee is excessive because the award of benefits is "nominal." Employer did not raise this contention below, and may not raise it 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).

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).

given the nature of the case, the experience of the attorneys and the quality of their representation. 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 rate awarded by the administrative law judge.³ See *Maddon*, 23 BRBS at 55; *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

Lastly, employer objects to counsel's minimum quarter-hour billing method. In its unpublished order in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990), the United States Court of Appeals for the Fifth Circuit stated that, generally, attorneys should bill no more than one-eighth hour for review of a one-page letter and one-quarter hour for writing a one-page letter. The Fifth Circuit recently stated that this fee order is considered to be circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (unpublished). The one-quarter hour charges on February 23, 1989, for review of a letter from the carrier regarding a medical appointment, and on November 11, 1989, for review of a letter from employer's counsel to the administrative law judge are excessive under this criteria, and we reduce the entries to one-eighth hour each. The remaining entries awarded by the administrative law judge conform to the Fifth Circuit's guidelines.

³We 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.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is modified to disallow a fee for one-quarter hour, and is otherwise affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge