

FRANK BELLAIS, SR.)	
)	
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 and Order Denying Motion for Reconsideration of Attorney Fee Award of Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

John F. Dillon (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 and Order Denying Motion for Reconsideration of Attorney Fee Award (88-LHC-1840) 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's counsel sought an attorney's fee of \$727, representing 4.75 hours at \$150 per hour, and \$14.50 in expenses, for work performed before the administrative law judge in connection with claimant's hearing loss claim. The administrative law judge awarded counsel a fee of \$475, representing 4.75 hours at an hourly rate of \$100, plus expenses of \$14.50. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

On appeal, employer initially contends that it should not be held liable for claimant's

attorney's fee pursuant to Section 28(a) of the Act, 33 U.S.C. §928(a), since it accepted liability for the claim and commenced voluntary payments of compensation to claimant within 30 days of receiving formal notice of the claim from the district director's¹ office. Alternatively, employer argues that, under Section 28(b) of the Act, 33 U.S.C. §928(b), the fee awarded to claimant's counsel should be based solely upon the difference between the amount of voluntary benefits initially paid to claimant and the amount ultimately awarded by the administrative law judge.

Under Section 28(a) of the Act, if an employer declines to pay any compensation within 30 days after receiving written notice of a claim from the district director, and the claimant's attorney's services result in a successful prosecution of the claim, claimant is entitled to an attorney's fee payable by the employer. 33 U.S.C. §928(a). Pursuant to Section 28(b) of the Act, 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 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).

Initially, we need not address employer's argument with respect to liability under Section 28(a), inasmuch as the case at bar is governed by Section 28(b). Specifically, we note that although employer initially made voluntary payments of compensation to claimant based on a 40.6 percent binaural hearing loss, after the case was referred to the Office of Administrative Law Judges on March 24, 1988, employer agreed that claimant was entitled to compensation for a 48.45 percent binaural hearing impairment, an increase in benefits of 7.85 percent. Additionally, while employer's voluntary payments were based on the conversion of claimant's 48.45 percent binaural hearing impairment to a 17 percent impairment of the whole person pursuant to Section 8(c)(23) of the Act, 33 U.S.C. §908(c)(23), the administrative law judge, in his Order on Motions for Summary Judgment, found that claimant is entitled to benefits for a 48.45 percent binaural impairment pursuant to Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13). Employer is thus liable for claimant's attorney's fees for services performed at the administrative law judge level, pursuant to Section 28(b), since claimant's counsel succeeded in obtaining additional benefits for claimant while this case was before the Office of Administrative Law Judges. *See* 33 U.S.C. §928(b); *see generally Tait*, 24 BRBS at 59. Moreover, employer's contention that the fee award should be limited by the amount of additional compensation obtained by claimant is without merit as the fee awarded is clearly reasonable, with the exception of the reductions made herein in connection with counsel's minimum billing method, in relation to the additional benefits awarded by the administrative law judge.

Next, after considering employer's objections to the hourly rate and the number of hours awarded, we reject those contentions, with the exception of the reductions made herein in connection with the minimum billing method, as it has not shown that the administrative law judge abused his discretion in this regard. *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

¹Pursuant to Section 702.105 of the regulations, 20 C.F.R. §702.105, the term "district director" has replaced "deputy commissioner" used in the statute.

(1981).

Employer further objects to counsel's method of billing in minimum increments of one-quarter hour. Consistent with 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), we reduce the entries dated February 28, 1988, July 26, 1988, February 22, 1989, and February 23, 1989 from one-half hour to one-quarter hour and the entries dated May 12, 1988 and June 7, 1988 from one-quarter hour to one-eighth hour.

Employer's remaining 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) (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 Supplemental Decision and Order and Order Denying Motion for Reconsideration of Attorney Fee Award of the administrative law judge are modified as stated herein, and are otherwise affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge