

BRB Nos. 96-0614  
and 96-0614S

LOUIS A. VIAL, SR. )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 INGALLS SHIPBUILDING, ) DATE ISSUED: \_\_\_\_\_  
 INCORPORATED )  
 )  
 Self-Insured )  
 Employer-Respondent ) DECISION and ORDER

Appeals of the Decision and Order - Awarding Benefits and Supplemental Decision and Order Awarding Attorney's Fees of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof, P.C.), Mobile, Alabama, for claimant.

Tracie 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:

Claimant appeals the Decision and Order - Awarding Benefits and the Supplemental Decision and Order Awarding Attorney's Fees (94-LHC-1963) of Administrative Law Judge Lee J. Romero, Jr., 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). The amount of an attorney's fee award is discretionary and may be set aside only if 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 12, 1991, claimant filed a notice of injury and a claim for hearing loss benefits against employer for whom claimant last worked on June 20, 1975. In his Decision and Order, the administrative law judge awarded claimant benefits for a 10.94 percent binaural impairment pursuant to Section 8(c)(13)(B) of the Act, 33 U.S.C. §908(c)(13)(B). The administrative law judge additionally held employer liable for interest on any sums determined to be due and owing as of December 12, 1991, the date of the notice of injury.

Claimant's counsel subsequently filed a fee petition with the administrative law judge requesting attorneys' fees totalling \$2,344.50, representing 13.3 hours of services rendered by lead counsel at \$165 per hour and 1.2 hours of service by associate counsel at \$125 per hour, with \$25 for expenses, for work performed before the administrative law judge in connection with this hearing loss claim. Employer filed objections to the fee request. In a Supplemental Decision and Order, the administrative law judge, after considering the objections raised by employer, reduced the number of hours sought by counsel to 1.9, reduced the hourly rate sought to \$150 for claimant's lead counsel, approved the hourly rate of \$125 for claimant's associate counsel, and thereafter awarded claimant's counsel attorneys' fees and expenses totalling \$285.

On appeal, claimant contends that interest should accrue as of June 20, 1975, the date of claimant's last covered exposure to injurious noise, and not from when employer obtained knowledge of claimant's injury. In a supplemental appeal, claimant challenges the fee awarded by the administrative law judge; specifically, claimant asserts that if the Board should reverse the administrative law judge's decision on the aforementioned interest issue, it must consequently hold that counsel is entitled to a fee for all time reasonably expended on that issue.

We first address claimant's argument that his entitlement to interest accrues from his last date of exposure to injurious noise in 1975. The Board's recent decision in *Renfroe v. Ingalls Shipbuilding, Inc.*, 30 BRBS 101 (1996) (*en banc*), is dispositive of the issue raised by claimant. In *Renfroe*, the Board held that in a hearing loss case, interest accrues on compensation from the date benefits become due under Section 14(b), 33 U.S.C. §914(b), and accrues on all benefits due and unpaid from that date until they are paid. The Board held that an employer cannot wrongfully withhold or delay the payment of benefits until they are "due," and benefits do not become "due" under Section 14(b) until employer has knowledge of the injury, or notice of the injury pursuant to Section 12, 33 U.S.C. §912. *Renfroe*, 30 BRBS at 105; *see also Meardry v. Int'l Paper Co.*, \_\_\_ BRBS \_\_\_, BRB Nos. 93-1693/A (Sept. 12, 1996). Therefore, for the reasons articulated in *Renfroe*, we reject claimant's contention that interest should accrue as of the date of last exposure to injurious noise, and not as of the date that employer obtained knowledge of claimant's injury. We thus affirm the administrative law judge's determination that employer is liable for interest on benefits accruing as of December 12, 1991, the date of the notice of injury.

In his supplemental appeal, claimant challenges the administrative law judge's reduction of his requested fee. Specifically, claimant's contends that, should the Board hold that the administrative law judge erred in determining the date upon which to base the calculation of interest due claimant, claimant would have successfully prosecuted this issue and would be entitled to a fee. *See* 33 U.S.C. §928(b). In reducing the fee sought by claimant for work performed at the administrative law judge level, the administrative law judge specifically found that claimant had not been successful regarding the two disputed issues presented at the formal hearing: the extent of claimant's impairment and the amount of interest due claimant. As we have affirmed the administrative law judge's determination regarding the calculation of interest in this case, claimant has not been successful in overturning the administrative law judge's decision on that issue; the relief requested by claimant is therefore denied.

Accordingly, the Decision and Order - Awarding Benefits and the Supplemental Decision and Order Awarding Attorney's Fees of the administrative law judge are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge