

BRB No. 92-1561

ROBERT L. HURD)
)
 Claimant-Petitioner)
)
 v.)
)
 INGALLS SHIPBUILDING,) DATE ISSUED:
 INCORPORATED)
)
 Self-Insured)
 Employer-Respondent) DECISION AND ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of A.A. Simpson, Jr., 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 employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (88-LHC-2950) of Administrative Law Judge A.A. Simpson, 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). 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 was exposed to workplace noise at employer's facility while in the course of his employment. He underwent an audiometric examination on July 10, 1987, which was interpreted by Dr. Wold as showing a 12.1 percent binaural hearing impairment. Claimant underwent further testing on December 10, 1987, the results of which revealed a 7.5 percent binaural hearing impairment. Claimant filed a claim for his hearing loss under the Act.

In his Decision and Order, the administrative law judge averaged the results of the two examinations and found that claimant suffers from a 9.8 percent work-related binaural hearing impairment. In addition, the administrative law judge found that claimant is entitled to interest and that employer is liable for a penalty pursuant to Section 14(e), 33 U.S.C. §914(e).

Thereafter, claimant's counsel filed a fee petition for work performed before the administrative law judge in which he requested \$3,571.50, representing 28.25 hours of services at \$125 per hour and \$40.25 in expenses. Employer filed objections. In a Supplemental Decision and Order, the administrative law judge reduced the hourly rate from \$125 to \$100 for work performed by attorney Lomax. For attorneys Ainsworth and Dillon, he reduced the hourly rate to \$80 for work performed in 1989, \$85 for work performed in 1990, and \$95 for work performed in 1991. Supp. Decision and Order at 4. The administrative law judge disallowed the time requested for work performed on July 28, 1988 and reduced the time requested on a number of other entries. Consequently, he awarded a total fee to claimant of \$1,340. Claimant appeals the reduction of the requested fee, and employer responds, urging affirmance.

Claimant contends on appeal that the administrative law judge erred in disallowing one hour for work performed on July 28, 1988. Claimant contends that the administrative law judge abused his discretion in disallowing the time based on an affidavit supplied by employer to the effect that claimant's attorney previously had billed employer for 28.5 hours on the day in question. Claimant asserts an inability to challenge the accuracy of the affidavit because the prior attorney's fee petitions are not identified and because there is no way to determine the amounts awarded therefor or whether the use of a minimum billing method may have affected the total hours requested on a certain day. He asks the Board to modify the award and allow the hour, or in the alternative, award the reduced time the administrative law judge stated he would have granted if the affidavit had not been presented. We reject claimant's contentions.

For the date in question, counsel requested one hour to prepare and file discovery documents. Employer objected to his request, arguing that the information sought was unnecessary for the instant action. Additionally, employer attached the sworn affidavit of Barbrea Darsey, an employee of F.A. Richard & Associates, the administrator of employer's Longshore and Harbor Workers' Compensation Program, to show that prior to the petition at issue in this case claimant's counsel had billed employer 28.5 hours for work performed on July 28, 1988 in connection with other cases. The administrative law judge found:

The time claimed on July 28, 1988 with respect to preparation of certain discovery is disallowed in view of the uncontroverted affidavit affixed to Employer's opposition, wherein it is noted that Mr. Lomax has already claimed 28.5 hours on that date in other hearing loss cases. Had I allowed any time, however, it would have been reduced to 1/4 hour in view of the fact that the identical pleading had been filed in numerous other cases.

Supp. Decision and Order at 4. Thus, in addition to the affidavit, the administrative law judge also cited the repetitious nature of the discovery documents as a reason for disallowing the one hour claimed on July 28, 1988. We conclude that the administrative law judge's reliance on the affidavit does not constitute an abuse of discretion, and his explanation for disallowing the hour on that day is rational. Therefore, we affirm the awarded attorney's fee. *See generally Roach v. New York*

Protective Covering Co., 16 BRBS 114 (1984); *Muscella*, 12 BRBS at 272.

Accordingly, the Supplemental Decision and Order Awarding Attorney Fees of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge