JAMES WILLIAMS	)	BRB No. 92-1937
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	
	)	
Self-Insured Employer-Respondent	)	
	)	
	)	
JAMES WILLIAMS	)	BRB No. 93-497
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:_____
INGALLS SHIPBUILDING, INCORPORATED	)	
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeals of the Decision and Order Awarding Benefits and the Supplemental Decision and Order Awarding Attorney Fees of A. A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

John F. Dillon (Maples & 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:

Claimant appeals the Decision and Order Awarding Benefits, and Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (90-LHC-3222) 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). 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 will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with the law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant alleges he suffered a traumatic hearing loss to his right ear in 1985 when an air hose broke loose from the equipment he was using. Cl. Exs. 2-3; Emp. Ex. 14 at 8, 34-35. He also alleges he was exposed to noise during the course of his employment as a welder and painter between 1976 and 1986. Claimant underwent an audiometric evaluation on November 10, 1986, and in a report dated January 12, 1987, Dr. Stanfield stated that the results of the evaluation show a high frequency loss in claimant's left ear and severe sensori-neural loss in his right ear that is consistent with acoustic trauma. Dr. Stanfield determined that claimant has a binaural impairment of 10.31 percent. Cl. Ex. 2. Based on this report, claimant filed a notice of injury and a claim for compensation on January 17, 1987, and employer controverted the claim on July 22, 1987. Cl. Exs. 4-5, 8. Claimant underwent additional audiometric evaluations on December 29, 1988, and February 11, 1991. The results of the 1988 evaluation indicate that claimant has a severe flat nerve-type loss in his right ear which is not characteristic of noise, and a sloping nerve-type loss in his left ear which is immeasurable. Dr. Lamppin determined that claimant has an 84 percent impairment in his right ear, and a zero percent impairment in his left, with a binaural impairment of 14 percent. Emp. Ex. 4. Thereafter, on January 6, 1989, employer filed a second notice of controversion. Cl. Ex. 9. The results of the 1991 audiological evaluation indicate that claimant has a mild sensori-neural loss in his left ear and a severe sensori-neural loss in his right ear which may have been caused by an acoustic trauma. Dr. Wold determined that claimant has a 75 percent impairment in his right ear and a zero percent impairment in his left ear, with a binaural impairment of 12.5 percent. Cl. Ex. 3. Claimant filed an amended claim for benefits, specifically including the 1985 acoustic trauma, on May 28, 1991. Cl. Ex. 24.

The administrative law judge determined that claimant suffered an acoustic trauma in 1985. Decision and Order at 3. However, he concluded that the claim for benefits for that traumatic injury was not filed in a timely manner, as neither the 1987 claim nor the 1991 claim was filed within the time constraints set forth in Sections 12 and 13 of the Act, 33 U.S.C. §§912, 913. Decision and Order at 3. Based on the audiograms of record, the administrative law judge found that claimant has a mild, noise-induced, work-related hearing loss in his left ear, which measures zero percent. Consequently, he denied benefits, interest, and a Section 14(e), 33 U.S.C. §914(e), penalty. *Id.* Because claimant sustained a work-related injury, the administrative law judge awarded medical benefits. *Id.* at 4.

Thereafter, claimant petitioned for an attorney's fee of $3,949.50, representing 30.5 hours of services at $125 per hour, plus $137 in expenses. The administrative law judge approved 16 7/8 hours of services at various hourly rates and awarded total fee of $1,563.13, plus expenses. Supp. Decision and Order.

Claimant appeals the administrative law judge's denial of compensation, and employer responds, urging affirmance. BRB No. 92-1937. Employer appeals the amount of the fee award, and claimant responds, urging affirmance. BRB No. 93-497.

Statute of Limitations

Claimant contends the administrative law judge erred in finding that the claim for benefits for the traumatic hearing loss was not filed in a timely manner. He argues that his claim for the traumatic hearing loss is included in his 1987 claim for compensation, and his 1991 claim should be considered as an amendment to the 1987 claim and not as a new claim. Employer responds, arguing that claimant's traumatic injury was not included in the original claim for compensation, otherwise there was no need for claimant to file the 1991 claim.

In this case, claimant filed a claim for compensation for his hearing loss on January 17, 1987. As evidence supporting his claim, he attached the January 12, 1987, report written by Dr. Stanfield. On the claim form, he requested benefits for a 10.31 percent binaural loss due to repeated noise. Cl. Exs. 4-5. Under the Act, any letter or notice to the district director from which it may reasonably be inferred that a claim for compensation is being made is sufficient to constitute a claim under the Act. *Vodanovich v. Fishing Vessel Owners Marine Ways, Inc.*, 27 BRBS 286 (1994). An attending physician's report indicating the possibility of a continuing disability also is sufficient. *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990). As claimant attached to his claim form a doctor's report indicating a binaural impairment caused by long-term noise exposure as well as an acoustic trauma, we hold that the 1987 claim for compensation included claimant's request for benefits for the traumatic hearing loss. Specifically, claimant sought benefits for a 10.31 percent binaural impairment, and Dr. Stanfield calculated this impairment rating after taking both types of hearing loss into consideration. Therefore, the 1987 documents fully informed employer of claimant's intention to seek compensation for his entire hearing loss.[1] *See Chong*, 22 BRBS at 244.

Claimant next contends that the statute of limitations for filing his claim for benefits did not begin to run until he received an audiogram with an accompanying report pursuant to Section 8(c)(13)(D), 33 U.S.C. §908(c)(13)(D) (1988). Employer asserts that claimant's hearing loss due to acoustic trauma should be treated as a traumatic injury and not as an occupational hearing loss; therefore, as claimant did not comply with the filing provisions of Sections 12 and 13 of the Act, his claim was not timely filed. Under the Act, in a traumatic injury case, notice of injury must be filed within 30 days, and a claim for compensation must be filed within one year, of the date of injury,

[1]An amendment to a claim which is reasonably within the scope of the original claim is liberally allowed under the Act. *Mikell v. Savannah Shipyard Co.*, 24 BRBS 100 (1990) *aff'd on recon.*, 26 BRBS 32 (1992), *aff'd mem. sub nom. Argonaut Ins. Co. v. Mikell*, 14 F.3d 58 (11th Cir. 1994); 29 C.F.R. §18.5(e). Therefore, we agree with claimant that his 1991 claim for compensation should be considered as an amendment to his earlier claim, as it is not based on a separate injury but is related to his hearing loss.

which occurs when claimant becomes aware of the relationship between his injury and his employment. 33 U.S.C. §§912(a), 913(a). Under Section 8(c)(13)(D), the time limitations of Sections 12 and 13 are tolled until a claimant receives an audiogram showing a hearing loss and an accompanying report. *See, e.g., Mauk v. Northwest Marine Iron Works*, 25 BRBS 118 (1991). Contrary to employer's assertion, Section 8(c)(13) does not distinguish between hearing loss caused by trauma and hearing loss caused by long-term exposure to industrial noise. *See generally Tanner v. Ingalls Shipbuilding, Inc.*, 2 F.3d 143, 27 BRBS 113 (CRT) (5th Cir. 1993); *Rasmussen v. General Dynamics Corp.*, 993 F.2d 1014, 27 BRBS 17 (CRT) (2d Cir. 1993) (rejecting argument that Section 8(c)(13)(A) is limited to traumatic hearing loss on the basis that the statute does not distinguish between types of loss). Moreover, the Supreme Court has stated that Section 8(c)(13) applies to all claims for work-related hearing loss. *Bath Iron Works Corp. v. Director, OWCP*, ___ U.S. ___, 113 S.Ct. 692, 26 BRBS 151 (CRT) (1993). As this is a hearing loss case, Section 8(c)(13)(D) applies here as well.

In accordance with Section 8(c)(13)(D), the time limit for filing a notice of injury and a claim for compensation for a work-related hearing loss begins to run after claimant receives an audiogram and an accompanying report interpreting the results of the audiogram. *Bridier v. Alabama Dry Dock & Shipbuilding Co.*, 29 BRBS 84 (1995). In this case, claimant filed his notice of injury and claim for compensation for both the traumatic and the noise-induced hearing loss, within five days of receiving the audiogram and report. As this is well within the time constraints established by Sections 8(c)(13)(D), 12, and 13, claimant's claim for his acoustic trauma was timely filed. *Id.*; *see also Bath Iron Works*, 113 S.Ct. at 700, 26 BRBS at 154 (CRT); *Vaughn v. Ingalls Shipbuilding, Inc.*, 28 BRBS 129 (1994) (decision on recon. *en banc*). Therefore, we reverse the administrative law judge's finding that claimant's claim for his traumatic hearing loss was not filed in a timely manner, and we remand the case for him to consider merits of the claim.[2]

Attorney's Fee

Employer contends the administrative law judge awarded an attorney's fee which is excessive given claimant's limited success in obtaining benefits. Specifically, employer argues that claimant's award of medical benefits alone does not warrant a fee of over $1,500. In light of our decision to remand this case for further consideration of the merits of claimant's claim for compensation for his traumatic hearing loss and the possibility that claimant will succeed in obtaining disability compensation, interest, and a Section 14(e) penalty, we hold that employer's argument is moot, contingent upon the administrative law judge's decision on remand. *See generally Snowden v. Ingalls Shipbuilding, Inc.*, 25 BRBS 245 (1991) (Brown, J., dissenting on other grounds), *aff'd on recon. en banc*, 25 BRBS 346 (1992) (Brown, J., dissenting on other grounds).

Employer also argues that the lack of complexity of the instant case mandates a reduction in

[2]In light of our decision to remand the case, we decline to address the parties' arguments concerning the applicability of the aggravation doctrine. If necessary, the administrative law judge should consider it on remand.

the amount of the fee awarded to claimant's counsel. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work performed and shall take into account the quality of the representation, the complexity of the issues, 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). While the complexity of the issues should be considered by the administrative law judge, it is only one of the relevant factors. *See generally Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). In this case, the administrative law judge agreed with employer's objection that the requested hourly rate of $125 was too high in light of the lack of complex issues, and he awarded hourly rates ranging from $80 to $100. We reject employer's argument on appeal that the fee should be further reduced based on this criterion. As employer has not satisfied its burden of showing that the administrative law judge abused his discretion in awarding a fee based on the variable hourly rates, we affirm the administrative law judge's finding. *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993); *LeBatard v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 10 BRBS 317 (1979).

Employer also objects to counsel's use of the quarter-hour minimum billing method. Although counsel submitted a petition primarily using this method of billing, the administrative law judge reduced entries for time spent reviewing letters on three different dates from one-quarter hour to one-eighth hour in compliance with the unpublished fee order rendered by 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).[3] *See also Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (table); *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995). Therefore, these entries need not be further reduced.

Finally, employer makes specific contentions regarding time allowed for review of the file and correspondence, for preparation, filing and review of discovery documents, and for preparation and attendance at a deposition and at the hearing. The administrative law judge agreed with several of the objections and reduced the requested fee by a total of 13.625 hours. Because employer has failed to show an abuse of discretion by the administrative law judge in awarding time for the remaining services, having specifically considered employer's objections, we reject these item-specific contentions and decline to further reduce the administrative law judge's award. *See generally Watkins*, 26 BRBS at 182; *Mijangos v. Avondale Shipyards, Inc.*, 19 BRBS 15 (1986), *rev'd on other grounds*, 948 F.2d 941, 25 BRBS 78 (CRT) (5th Cir. 1991).

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated, and the case is remanded for further action consistent with this opinion. The administrative law judge's Supplemental Decision and Order is affirmed.

SO ORDERED.

[3]The administrative law judge allowed one-quarter hour for writing letters, and the Fifth Circuit has stated that this is a reasonable amount of time for a one-page letter. *See Fairley*, slip op. at 2.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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NANCY S. DOLDER
Administrative Appeals Judge