

JOHN McCON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Compensation Order-Award of Attorney's Fee of N. Sandra Ramsey, District Director, 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:

Employer appeals the Compensation Order-Award of Attorney's Fee (OWCP No. 06-0101079) of District Director N. Sandra Ramsey 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 sought benefits under the Act for a work-related hearing loss. Employer was notified of the claim by the district director on March 3, 1987, and filed a notice of controversion in November 1987. As the issues remained unresolved, the case was transferred to the Office of Administrative Law Judges for a hearing. Pursuant to employer's request, claimant underwent independent audiometric testing on May 19, 1992, that was interpreted by Dr. Graves as showing a .3 percent binaural hearing loss.¹ On June 17, 1992, employer voluntarily paid claimant \$166.32 in

¹Claimant also underwent audiometric testing on June 2, 1987, that was interpreted by audiologist Marianne Towell as an invalid test and on September 14, 1987, that was interpreted by Dr. Stanfield

permanent partial disability compensation, plus \$39.51 in interest.

Subsequently, claimant's counsel filed a fee petition for work performed before the district director, requesting \$979.25 representing 9.625 hours of legal services at the hourly rate of \$100, plus \$16.25 in expenses. Employer thereafter submitted objections. After considering employer's objections, the district director disallowed the costs requested and awarded claimant's counsel a fee in the amount of \$962.50 to be paid by employer.

On appeal, employer contends that the fee award by the district director is excessive and should be reduced; employer incorporates the objections it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer initially contends that the district director erred in finding that claimant successfully prosecuted the claim. Employer contends that there has been neither a formal adjudication of this claim, nor an award of benefits. Under Section 28(a), 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, the claimant is entitled to an attorney's fee award payable by the employer. 33 U.S.C. §928(a); *see Mobley v. Bethlehem Steel Corp.*, 20 BRBS 239 (1988), *aff'd*, 920 F.2d 558, 24 BRBS 49 (CRT)(9th Cir. 1990). In the present case, employer continued to contest the claim after it had been referred to the Office of Administrative Law Judges for adjudication and until it voluntarily paid compensation and interest on June 17, 1992. Contrary to employer's contention, Section 28 does not require a formal award of benefits in order to assess claimant's attorney's fee against employer. It is well-settled that legal services rendered on behalf of claimant in anticipation of litigation which result in a favorable disposition are compensable under the Act. *See Thornton v. Beltway Carpet Service, Inc.*, 16 BRBS 29 (1983); *Revoir v. General Dynamics Corp.*, 12 BRBS 525 (1980). Therefore, we affirm the district director's finding that claimant's attorney is entitled to a fee award to be assessed against employer pursuant to Section 28(a) of the Act. 33 U.S.C. §928(a).

as an invalid test.

Employer also contends that the lack of complexity of the instant case mandates a reduction in the amount of the fee awarded to claimant's counsel.² We disagree. 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 any attorney's fee approved 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). Thus, while the complexity of issues should be considered by the district director, it is only one of the relevant factors. *See generally Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). As the district director specifically accounted for the complexity of the case in finding the \$100 hourly rate sought reasonable and appropriate, employer's assertion that the complexity of the case does not warrant the fee awarded is rejected. Moreover, employer has not established that the district director abused her discretion in awarding an hourly rate of \$100, and we accordingly affirm the hourly rate awarded. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

We also reject employer's contention that various entries in counsel's fee petition were either unnecessary or excessive. The district director considered employer's objections and found the services rendered by claimant's counsel to be reasonable and necessary. We decline to disturb this rational determination. *Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Accordingly, the district director's Compensation Order-Award of Attorney's Fee is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

²We reject employer's contention that this was an uncontested claim. Employer continued to contest the hearing loss claim after the case was referred to the Office of Administrative Law Judges and until voluntary compensation payment was made on June 17, 1992. In addition, we need not address employer's contentions regarding the amount of the attorney's fee under Section 28(b) of the Act, 33 U.S.C. §928(b), as we hold that employer is liable for an attorney's fee award pursuant to Section 28(a). 33 U.S.C. §928(a).