

BRB No. 93-0179

JAMES E. SAVAGE)
)
 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 of Quentin P. McColgin, 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 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 (90-LHC-1774) of Administrative Law Judge Quentin P. McColgin 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. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim under the Act seeking benefits for a noise-induced hearing loss based on an audiogram administered on March 3, 1989, which revealed a 2.5 percent binaural hearing impairment. The parties stipulated to an average weekly wage of \$177. After determining that employer is responsible for claimant's work-related hearing loss, the administrative law judge awarded claimant benefits for a 2.5 percent binaural hearing loss pursuant to Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13). The administrative law judge also awarded claimant medical benefits under Section 7 of the Act, 33 U.S.C. §907.

Thereafter, claimant's counsel submitted a fee petition to the administrative law judge requesting an attorney's fee of \$2,530, representing 20 hours of services at \$125 per hour, and \$30 in expenses. Employer filed objections to the fee request. In a Supplemental Decision and Order, the administrative law judge reduced the hourly rate sought to \$100 and the number of hours sought by 7.75.¹ The administrative law judge awarded claimant's counsel a fee of \$1,325, representing 13.25 hours of services at \$100 per hour, plus \$30 in expenses, for a total fee award of \$1,355. On appeal, employer challenges the administrative law judge's award of an attorney's fee, incorporating by reference the objections it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer contends that the fee awarded is excessive, maintaining that the case was routine and uncontested. 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 the award of any attorney's fee approved shall be reasonably commensurate with the necessary work done, the complexity of the 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). In the instant 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 an hourly rate of \$100. We reject employer's argument on appeal that the fee should be further reduced based on this criterion because employer has not satisfied its burden of showing that the administrative law judge abused his discretion in awarding a fee based on an hourly rate of \$100. *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993). Contrary to employer's contention, moreover, this was not an uncontested case, as employer did not voluntarily pay compensation.

Employer also contends that the awarded fee is excessive because the award of benefits is "nominal." Employer did not raise this contention below, and may not raise it for the first time on appeal.² *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993)(*en banc*)(Brown and McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd in pertinent part 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).

Employer additionally challenges the number of hours requested by claimant's counsel and

¹The administrative law judge reduced the number of hours sought by 7.75 hours but then awarded claimant's counsel 1 hour to reply to employer's objections to the fee petition.

²For the reasons stated in *Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230 (1993), we reject employer's reliance on *Cuevas v. Ingalls Shipbuilding, Inc.*, BRB No. 90-1451 (Sep. 27, 1991)(unpublished) in support of its assertion that the fee awarded is excessive. *See also Lopez v. Southern Stevedores*, 23 BRBS 295, 300 n. 2 (1990).

approved by the administrative law judge.³ In this regard, employer contends that the time spent in certain discovery-related activities and in reviewing and preparing various legal documents was either unnecessary or excessive. In considering counsel's fee petition, the administrative law judge set forth employer's specific objections, reduced the number of hours requested by 7.75, and determined that the remaining time requested by claimant's counsel for services rendered was both reasonable and necessary. Because employer has failed to show an abuse of discretion by the administrative law judge in awarding time for these 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 179; *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).

Lastly, employer objects to counsel's billing one quarter-hour for review of routine letters. In its unpublished order in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990)(unpublished), the United States Court of Appeals for the Fifth Circuit stated that, generally, attorneys should bill no more than one-eighth hour for review of a one-page letter and one-quarter hour for writing a one-page letter. The Fifth Circuit recently stated that this fee order is considered to be circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(unpublished). Counsel's fee petition generally conforms to these guidelines. However, with regard to the fee petition, we find four one-quarter hour entries requested for services performed on March 11, 1991, April 1, 1991, and April 29, 1992,⁴ to be excessive under these criteria. Accordingly, we modify the award to reflect the reduction of these entries from one-quarter hour to one-eighth of an hour consistent with *Biggs* and *Fairley*.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is modified to reflect the reduction of the itemized entries on March 11, 1991, April 1, 1991, and April 29, 1992, from one-quarter to one-eighth hour. In all other respects, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief

³We reject employer's argument that the administrative law judge must base his fee award in this case upon the decision rendered by another administrative law judge in *Cox v. Ingalls Shipbuilding, Inc.*, 88-LHC-3335 (Sep. 5, 1991), as fees for legal services must be approved at each level of the proceedings by the tribunal before which work was performed. 33 U.S.C. §928(c); *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, *modifying in part on recon.* 28 BRBS 27 (1994).

⁴The entry dated April 29, 1992 appears to be a typographical error and should be dated April 29, 1991. While we are reducing the first entry on April 29, 1991, to one-eighth hour, we allow the second entry on April 29, 1991, in full.

Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge