

NORMA JEAN TUBB)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	DATE ISSUED:
)	
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 & 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 Supplemental Decision and Order Awarding Attorney Fees (90-LHC-1677) 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. *See, e.g., Muscella v. Sun Shipbuilding and Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for compensation under the Act, and was successful in obtaining benefits for her hearing loss. Claimant's counsel filed a Petition for Approval of Attorney's Fee, requesting 22.125 hours for work performed at the administrative law judge level, at a rate of \$125 per hour, plus \$48.75 in expenses. Employer filed objections to the fee petition. In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge reduced the number of hours sought by six, reduced the hourly rate to \$100, and awarded an attorney's fee of \$1,612.50, plus the requested expenses.

On appeal, employer challenges the administrative law judge's award of an attorney's fee, incorporating by reference the objections it raised below into its appellate brief. Claimant responds,

urging affirmance of the fee award.

Employer initially contends that the administrative law judge erred in holding it liable for claimant's attorney's fee, arguing that there was no successful prosecution of the claim because it voluntarily paid claimant compensation for her hearing loss. We disagree. Under Section 28(b), when an employer voluntarily pays or tenders benefits and thereafter a controversy arises over additional compensation due, the employer will be liable for an attorney's fee if the claimant succeeds in obtaining greater compensation than that agreed to by the employer. 33 U.S.C. §928(b).

See, e.g., Tait v. Ingalls Shipbuilding, Inc., 24 BRBS 59 (1990); *Kleiner v. Todd Shipyards Corp.*, 16 BRBS 297 (1984). In the instant case, although employer did agree that claimant was entitled to compensation for a .94 percent binaural hearing loss and medical benefits prior to the hearing, employer continued to dispute the nature and extent of claimant's disability due to her hearing loss. Thus, a controversy remained even after employer voluntarily paid compensation. As claimant was ultimately successful in establishing that she has a 3.85 percent loss of hearing over employer's objections, this additional compensation is sufficient to support an award of an attorney's fee payable by employer pursuant to Section 28(b).¹ *See Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61 (1991) (decision on remand).

Employer next contends that the fee award is excessive in view of the fact that this was a routine hearing loss claim involving undetailed form pleadings which resulted in only a nominal award of benefits. 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). In the instant case, the administrative law judge considered these criteria prior to reducing the number of hours and hourly rate sought by claimant's counsel. We therefore reject employer's contention that the fee should be reduced on this basis. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

¹Employer cites the ruling in *George Hyman Construction Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161 (CRT) (D.C. Cir. 1992), that where an attorney achieves only limited success in a claim filed under the Act, he may not be entitled to a fee for all hours expended on the case. *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In the case at bar, however, as claimant prevailed on all controverted issues before the administrative law judge, the limited success issues addressed in these cases are not relevant. Moreover, the fee awarded is reasonable given the amount of benefits awarded.

We also reject employer's contention that time for certain itemized entries awarded by the administrative law judge was either unnecessary or excessive.² The administrative law judge considered employer's objections, reduced the number of hours requested by six, and found the remaining services to be reasonable and necessary. We decline to disturb this rational determination. *See Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Employer further contends that the \$100 hourly rate awarded to claimant's counsel is excessive, asserting that an hourly rate of \$70 to \$85 would be more reasonable. The administrative law judge determined that the hourly rate of \$125 sought by claimant's counsel was excessive and awarded an hourly rate of \$100, which he found to be fair and reasonable considering the nature of the case, the experience of the attorneys and the quality of the representation. As employer's mere assertion that the awarded rate does not conform to the reasonable and customary charges in the area where this claim arose is insufficient to meet its burden of proving that the rate is excessive, we affirm the hourly rate awarded by the administrative law judge to counsel. *See Maddon*, 23 BRBS at 55.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

²We further reject employer's suggestion that the administrative law judge should have based his fee award in this case upon the decision rendered by another administrative law judge in *Cox v. Ingalls Shipbuilding, Inc.*, 88-LHC-3335 (Sept. 5, 1991), for the reasons stated in *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, *modifying in part on recon.* 28 BRBS 27 (1994). 33 U.S.C. §928(c).