

STEVE V. BARHANOVICH)	
)	
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 C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Rebecca J. Ainsworth (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 (88-LHC-1331) of Administrative Law Judge C. Richard Avery 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 shown by the challenging party 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's counsel submitted a fee petition to the administrative law judge requesting an attorney's fee of \$531.25, representing 4.25 hours of legal services at an hourly rate of \$125 per hour, for work performed before the administrative law judge in connection with claimant's hearing loss claim. Employer filed objections to the attorney's fee petition. Subsequently, the administrative law judge, after noting employer's objections to the fee petition, reduced the hourly rate sought by counsel to \$110 and approved the requested hours in a Supplemental Decision and Order. Accordingly, the administrative law judge awarded claimant's counsel a fee of \$467.50, representing 4.25 hours of legal services performed at the hourly rate of \$110. Supplemental Decision and Order

at 1-2.

On appeal, employer challenges the administrative law judge's attorney's fee award, incorporating by reference the arguments it made before the administrative law judge into its appellate brief.

Employer initially contends that claimant's counsel is not entitled to an attorney's fee payable by employer since employer voluntarily paid benefits to claimant and thus claimant did not engage in a successful prosecution of his claim. Pursuant to Section 28(b) of the Act, 33 U.S.C. §928(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. *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, employer voluntarily paid claimant permanent partial disability compensation for claimant's 29.75 percent binaural hearing loss based on a whole man impairment of ten percent pursuant to Section 8(c)(23) of the Act, 33 U.S.C. §908(c)(23). At the hearing, however, employer contested the issue of whether claimant was entitled to an assessment under Section 14(e) of the Act, 33 U.S.C. §914(e); pursuant to the administrative law judge's decision, claimant was found to be entitled to additional compensation under Section 14(e). Employer is hence liable for claimant's attorney's fees for services performed at the administrative law judge level, pursuant to Section 28(b), since claimant's counsel succeeded in obtaining additional benefits for claimant.¹ *Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61 (1991).

Employer next objects to the number of hours and hourly rate awarded by the administrative law judge, contending that the fee awarded is excessive since the instant case was routine, uncontested, and not complex. The administrative law judge considered the routine and uncomplicated nature of the instant case in reducing counsel's requested hourly rate from \$125 to \$110; moreover, the administrative law judge specifically noted employer's objections when he considered the number of hours requested by claimant's counsel. We, therefore, reject employer's contention that the awarded fee must be further reduced on this criterion because employer has not satisfied its burden of showing that the administrative law judge abused his discretion in this regard. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *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); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Accordingly, the Supplemental Decision and Order Awarding Attorney Fees of the

¹Employer's contentions which were not raised below will not be addressed for the first time on appeal. *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 mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.2d 66 (5th Cir. 1995); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).

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