

NORVELLE NECAISE)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION AND ORDER

Appeal of the Supplemental Decision and Order Granting 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 employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Granting Attorney Fees (90-LHC-1544) 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 & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sought benefits under the Act for a work-related hearing loss. Claimant underwent audiometric testing on December 27, 1986, that was interpreted by Dr. Wold as showing a 13.3 percent noise-related binaural hearing impairment. Based on this evaluation, claimant filed a notice of injury with employer on January 13, 1987. Claimant also underwent audiometric testing on August 14, 1987, that was interpreted by Dr. Stanfield as showing a 20.63 percent binaural hearing impairment. Employer received formal notice of the claim from the district director on January 22, 1988, and employer voluntarily paid benefits for a 6 percent whole man impairment on February 5, 1988.¹ However, a dispute remained regarding employer's liability for a Section 14(e) penalty, 33

¹Employer stopped compensation payments on August 16, 1989, due to claimant's death.

U.S.C. §914(e), and medical benefits. Although the case was transferred to the Office of Administrative Law Judges for resolution, prior to the hearing the parties resolved the disputed issues and requested that the case be remanded to the district director.

Subsequently, claimant's attorney filed a petition for an attorney's fee in the amount of \$2,575.75, representing 20.50 hours of legal services at the hourly rate of \$125. Employer filed objections to the fee petition. After considering employer's objections, the administrative law judge reduced the minimum billing time, when appropriate, to one-eighth of an hour and reduced the hourly rate to \$100. In addition, the administrative law judge addressed employer's specific objections and reduced the total hours requested by 8.25, and found the remaining hours to be reasonable and necessary. Thus, the administrative law judge awarded claimant's counsel a fee of \$1,225, representing 12.25 hours of legal services at the hourly rate of \$100, plus \$13.25 in costs.

On appeal, employer contends that the administrative law judge erred in assessing liability for the attorney's fee against employer. Alternatively, employer contends that the fee awarded is excessive as this was a routine, uncontested hearing loss case, and it incorporates by reference into its appellate brief the arguments it made below. Claimant responds, urging affirmance of the fee award.

Specifically, on appeal, employer contends that it should not be held liable for claimant's attorney's fee as it voluntarily accepted this claim as compensable and tendered benefits accordingly. We disagree. Employer did voluntarily commence payment of benefits to claimant within 30 days of the receipt of notice of the claim from the district director, thereby precluding employer's liability under Section 28(a) of the Act, 33 U.S.C. §928(a). Claimant, however, continued to seek medical benefits pursuant to Section 7, 33 U.S.C. §907, and a penalty pursuant to Section 14(e). After the case was referred to the Office of Administrative Law Judges, but prior to a hearing, the parties resolved the disputed issues and claimant's counsel was successful in establishing employer's liability for past medical benefits and a Section 14(e) penalty. Therefore, inasmuch as a controversy remained even after employer voluntarily paid benefits and claimant successfully obtained benefits greater than those voluntarily paid by employer, we affirm the administrative law judge's finding that claimant's attorney is entitled to a fee award to be assessed against employer pursuant to Section 28(b) of the Act, 33 U.S.C. §928(b). *See generally Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61 (1991); *Rihner v. Boland Marine & Manufacturing Co.*, 24 BRBS 84 (1990), *aff'd*, 41 F.3d 997, 29 BRBS 43 (CRT)(5th Cir. 1995). In addition, the administrative law judge properly noted that pursuant to Section 28(b) the attorney's fee need not be limited to the

monetary difference between the additional amount awarded and the amount already paid by employer. *Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994)(McGranery, J., dissenting); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993).

Alternatively, employer contends that the lack of complexity of the instant case mandates a reduction in the amount of the fee awarded to claimant's counsel. 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). As the administrative law judge specifically accounted for the lack of complexity of case in reducing the \$125 hourly rate sought to \$100, employer's assertion that the complexity of the case does not warrant the fee awarded is rejected. Moreover, employer has not established that the administrative law judge abused his 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 administrative law judge considered employer's objections, reduced the number of hours requested by 8.25, and found the remaining 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 Supplemental Decision and Order Granting 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