

BRB No. 98-556

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

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof, P.C.), Mobile, Alabama, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (97-LHC-562) of Administrative Law Judge Richard D. Mills 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 will not be set aside unless shown by the challenging party 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 sustained a work-related hearing loss during the course of his employment for employer. The parties settled claimant's claim pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i), with employer agreeing to pay claimant a total of \$4,840.97, representing \$1,500 for medical benefits, \$3,040.97 for disability benefits, and \$300 as a lien against claimant's disability benefits for his liability for an attorney's fee. The parties agreed that the administrative law judge would assess employer's liability for a fee in a separate decision. The administrative law judge approved the settlement.

Claimant's counsel submitted a fee petition for work performed before the administrative law judge in this case. Counsel requested a total fee of \$1,341.50, representing 7.6 hours of work at an hourly rate of \$165 and .7 hours of work at an hourly rate of \$125. Employer responded, objecting to the hourly rates, the number of hours, the violation of the minimum billing rule, the failure to tailor the fee to the amount of benefits awarded, and it made various other objections to specific entries. The administrative law judge considered each of employer's objections and reduced the hourly rate from \$165 to \$135. He also agreed with two of employer's objections and made minor reductions in time for two entries. Thus, the administrative law judge awarded claimant's counsel a total fee of \$1,069.63, representing 7.275 hours of work at an hourly rate of \$135, and .7 hours of work at an hourly rate of \$125. Employer appeals the fee award, and claimant responds, urging affirmance.

Employer contends the administrative law judge erred in failing to tailor the fee award to the amount of benefits claimant obtained, citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983), and *George Hyman Construction Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161 (CRT) (D.C. Cir. 1992). We reject employer's contention that claimant's success was limited and that the fee is excessive given the amount of benefits recovered. Claimant filed a claim for benefits for his work-related hearing loss, employer contested the claim, and the case was referred to the Office of Administrative Law Judges. Thereafter, the parties arrived at a compromise and submitted a settlement application pursuant to Section 8(i) of the Act. Thus, employer's assertion that claimant's success was limited is incorrect, as claimant succeeded fully by obtaining medical and disability benefits after employer controverted the claim. 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); *Mobley v. Bethlehem Steel Corp.*, 20 BRBS 239 (1988), *aff'd*, 920 F.2d 558, 24 BRBS 49 (CRT) (9<sup>th</sup> Cir. 1990). Moreover, the fee awarded is not excessive given claimant's recovery of about \$4,800, and in view of the fact that the administrative law judge reduced the hourly rate due, in part, to reflect the amount of benefits obtained. See generally

*Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230 (1993).

We also reject employer's remaining contentions. The administrative law judge addressed all of employer's objections, agreeing with some, and reduced the hours and hourly rate accordingly. Because employer has failed to show an abuse of discretion by the administrative law judge in awarding this fee, having specifically considered employer's objections, we reject its contentions, and we decline to further reduce the administrative law judge's award. See generally *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993); *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).

Accordingly, the administrative law judge's fee award is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge