

BRB No. 98-376

JAMES O. BEASLEY, SR.)	
)	
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.

Rebecca J. Ainsworth (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

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

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (94-LHC-2121) 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 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's counsel sought an attorney's fee of \$956.25, representing 6.375 hours at \$150 per hour, for work performed before the administrative law judge in

connection with claimant's hearing loss claim. The administrative law judge awarded counsel a fee of \$796.88, representing 6.375 hours at an hourly rate of \$125. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant responds, urging affirmance of the fee award. Employer filed a reply brief.

Employer's objections to the number of hours and hourly rate awarded are rejected, as it has not shown that the administrative law judge abused his discretion. See *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). Employer's specific contention, that the administrative law judge erred in allowing .125 hours on each of three dates for the review of correspondence concerning the applicability of Section 8(f), is without merit. The administrative law judge reasonably determined that claimant's counsel's fee request was not excessive and that counsel was entitled to review all correspondence to keep abreast of the issues.

We also reject employer's contention that the administrative law judge should have disallowed the 2.125 hours claimed after August 26, 1994, when employer completed payment to claimant for a 19.69 percent binaural hearing loss and accepted liability for medical benefits, as there was no "successful prosecution" after this date. The administrative law judge reasonably awarded the fee as requested after concluding that the time was spent to close out the case. See generally *Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

Contrary to employer's remaining contention on appeal, the administrative law judge's award of a fee of \$796.88 is clearly reasonable in view of claimant's success in obtaining payment for a 19.69 percent binaural impairment. See *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993); *George Hyman Constr. Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161 (CRT)(D.C. Cir. 1992).

Accordingly, the Supplemental Decision and Order of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge