

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

Appeal of the Supplemental Decision and Order Awarding Attorney's Fees of Paul A. Mapes, Administrative Law Judge, United States Department of Labor.

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

Traci M. Castille (Franke, Rainey & Salloum, PLLC), 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's Fees (90-LHC-1346) of Administrative Law Judge Paul A. Mapes 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 sought compensation under the Act for a 100 percent binaural hearing loss. No voluntary payments of disability or medical benefits were made. Following a hearing held on December 18, 1990, Administrative Law Judge A.A. Simpson, Jr., issued a Decision and Order Denying Benefits in which he found that although claimant had a 100 percent binaural hearing loss, it was not causally-related to his employment. Claimant appealed this Decision to the Board. On appeal, the Board held that claimant's hearing loss was work-related as a matter of law and remanded for consideration of all remaining issues. *Moody v. Ingalls Shipbuilding, Inc.*, BRB No. 92-0595 (December 10, 1993)(unpublished). In a Decision and Order on Remand issued on September 15, 1995, based on stipulations submitted by the parties, Administrative Law Judge Paul

A. Mapes awarded claimant compensation for a 100 percent binaural hearing loss based on a compensation rate of \$130.89 per week, a Section 14(e), 33 U.S.C. §914(e), penalty of \$2,617.80, interest, and future medical benefits.

Thereafter, claimant's counsel sought an attorney's fee of \$1,987.50, representing 13.25 hours at \$150 per hour, plus \$17.50 in expenses, for work performed before the Office of Administrative Law Judges in connection with claimant's hearing loss claim. In a Supplemental Decision and Order, Judge Mapes awarded claimant's counsel a fee of \$1,656.25, representing 13.25 hours at an hourly rate of \$125, plus expenses of \$17.50. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant has not filed a response brief but has submitted a fee petition for work performed before the Board in BRB No. 92-0595.

Employer's objections to the number of hours and hourly rate awarded by the administrative law judge are rejected, as it has not shown that the administrative law judge abused his discretion in this regard. *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). Moreover, while employer correctly asserts that any fee awarded must be tailored to the degree of success obtained, in the present case the administrative law judge specifically considered this factor in awarding the fee. Citing *Hole v. Miami Shipyards Corp.*, 640 F.2d 769, 13 BRBS 237 (5th Cir. 1981), he found that while claimant had been denied benefits following the initial hearing before Judge Simpson, claimant thereafter prevailed on all issues after appealing to the Board, thereby entitling his counsel to a fee for all services rendered at each level of the adjudicatory process. Employer has failed to meet its burden of establishing that the administrative law judge erred in reaching this conclusion.

Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour is also rejected, as the administrative law judge considered this objection, and his award conforms to the criteria set forth in the decisions of the United States Court of Appeals for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990) (unpublished) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (table).

Similarly, we reject employer's assertion that the fee awarded by the administrative law judge is excessive in light of the routine and uncomplicated nature of the case. The administrative law judge specifically considered employer's objection in this regard and found that while the issues in this case may not have been especially novel, the fee request did not claim any enhancement to reflect novelty. Moreover, he noted that, in any event, the issues were sufficiently complex to have resulted in a Board decision reversing the initial decision of Judge Simpson. Inasmuch as the administrative law judge accounted for the lack of complexity of the case in making his fee award in this case, we reject employer's assertion that the fee should be further reduced on this basis. *See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989).

Employer'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.3d 66 (5th Cir. 1995); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988). We therefore affirm the administrative law judge's fee award.

With regard to claimant's fee petition for work performed before the Board in BRB No. 92-0595, counsel seeks \$431.25, representing 2.875 hours at \$150 per hour, plus \$9.00 in expenses for this work. Employer has filed objections to this request. We note employer's objections. As the requested fee is reasonable on the facts of this case, it is approved. Counsel is thus awarded the requested fee of \$431.25 plus \$9.00 in expenses, payable by employer directly to claimant's counsel. 33 U.S.C. §928; 20 C.F.R. §802.203.

Accordingly, the Supplemental Decision and Order Awarding Attorney's Fees of the administrative law judge is affirmed. Additionally, we award claimant's counsel an attorney's fee of \$431.25, plus expenses of \$9.00, for work performed before the Board in BRB No. 92-0595.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge