

BRB No. 96-1044

THOMPSON F. WALTERS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	DATE ISSUED: _____
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of James W. Kerr,
Jr., Administrative Law Judge, United States Department of Labor.

John L. Hunter (Cumbest, Cumbest, Hunter & McCormick), 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 (89-LHC-3250) of Administrative Law Judge James W. Kerr, Jr., 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 filed a claim under the Act seeking benefits for a noise-induced hearing loss. On May 10, 1988, employer filed a Notice of Controversy. *See EX 2.* Thereafter, on December 2, 1988, employer voluntarily commenced payment of compensation to claimant based on a 55.33 percent binaural impairment, which it converted to a 19 percent impairment of the whole person. *See EX 11.* In his Decision and Order, the administrative law judge awarded claimant compensation for a work-related 46.3 percent binaural hearing loss under Section 8(c)(23) of the Act, 33 U.S.C. §908(c)(23)(1988). He also found that claimant was entitled to a penalty under Section 14(e), 33 U.S.C. §914(e), interest in accordance with 28 U.S.C. §1961 on all past due benefits, and medical

expenses arising from his work injury.

Thereafter, claimant's counsel submitted a fee petition to the administrative law judge requesting an attorney's fee of \$1,354, plus expenses of \$390.75. Employer filed objections to the fee petition. After reviewing employer's objections, the administrative law judge awarded the fee requested by counsel.

Employer appealed the administrative law judge's decisions to the Board, contending that the administrative law judge erred in finding that the claim was timely filed and in determining that employer is liable for claimant's counsel's fee. The Board vacated the administrative law judge's finding that the claim was timely filed, and remanded the case for the administrative law judge to reconsider this issue in light of the decision of the United States Supreme Court in *Bath Iron Works Corp. v. Director, OWCP*, 506 U.S. 153, 26 BRBS 151 (CRT)(1993). Addressing employer's supplemental appeal of the administrative law judge's award of an attorney's fee, the Board vacated the fee award in light of its remand of the case. In the interest of administrative efficiency, however, the Board also addressed employer's contentions regarding the administrative law judge's fee award, rejecting employer's challenges thereto and holding it liable for the fee. In this regard, the Board noted that claimant's counsel's fee is contingent upon claimant successfully obtaining an award of benefits on remand. *Walters v. Ingalls Shipbuilding, Inc.*, BRB No. 91-0294 (Jan. 20, 1995)(unpublished),

In his Decision and Order On Remand, the administrative law judge found that the claim was timely filed pursuant to Section 13, 33 U.S.C. §913, of the Act, and he reinstated his prior fee award of \$1,744.75. Accordingly, the administrative law judge ordered compliance with his prior decisions in this case, except as modified by the Board.

Claimant's counsel subsequently submitted a fee petition to the administrative law judge requesting an additional fee of \$1,600, representing 15.4 hours of services rendered at \$100 per hour, 1 hour of paralegal services at \$40 per hour, and expenses of \$20. Employer filed objections to the fee petition. In a Supplemental Decision and Order, the administrative law judge addressed each of employer's specific objections, reduced the number of hours requested by two and one-quarter hours, and thereafter awarded a fee of \$1,415, representing 14.15 hours of services at the rate of \$100 per hour, 1 hour of paralegal services at the rate of \$40 per hour, plus \$20 in expenses, for a total fee \$1,475.

On appeal, employer challenges the administrative law judge's fee award on remand, incorporating by reference the objections it made below into its appellate brief. Claimant responds, urging affirmance.

Employer initially contends that claimant's success on remand was limited and thus the attorney's fee awarded by the administrative law judge should be limited in accordance with, *inter alia*, *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). In the instant case, the administrative law judge specifically set forth the regulatory criteria governing approval of an attorney's fee under the Act, 20 C.F.R. §702.132, which provides that the award of 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). Moreover, the administrative law judge discussed employer's specific objection, finding that the fee award in this case is appropriate considering the specific circumstances of the case on remand. *See Supplemental Decision and Order Awarding Attorney Fees* at 2. In this regard, we note that the administrative law judge, having found on remand that the claim was timely filed, ordered compliance with his prior Decisions and Orders awarding compensation to claimant and attorney's fees to claimant's counsel. Claimant thus was fully successful on remand and we reject employer's contention that the fee must be further reduced on this basis.

Employer next objects to the number of hours awarded by the administrative law judge, asserting that the instant case was routine and uncontested and invoked no complex or novel issues. We reject these contentions, as employer 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). Accordingly, the number of hours and hourly rate awarded by the administrative law judge are affirmed.

Finally, we note that the administrative law judge's fee order contains a mathematical error. Specifically, the administrative law judge approved 13.15 hours of requested time at an hourly rate of \$100, and 1 hour at an hourly rate of \$40. These awarded amounts result in an attorney's fee of \$1,355, not \$1,455 as set forth by the administrative law judge. We therefore modify the administrative law judge's fee award to reflect employer's liability for a fee of \$1,355 representing 13.15 hours of approved work at an hourly rate of \$100, and 1 hour of approved work at an hourly rate of \$40.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is modified to reflect employer's liability of an attorney's fee of \$1,355, in all other respects, the administrative law judge's fee award is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge