

BRB No. 91-1612

DONALD R. DAVIS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

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

Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

Before: DOLDER, Acting Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and SHEA, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (89-LHC-1135) of Administrative Law Judge Kenneth A. Jennings awarding benefits 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 20, 1986, that was interpreted by Dr. Wold as showing a binaural impairment of 38.5 percent. Claimant also underwent audiometric testing on July 30, 1987, that was interpreted by Dr. Lamppin as showing a binaural

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

impairment of 36 percent.¹ Employer voluntarily tendered a settlement offer of \$1,723.50 plus an

attorney fee up to \$125 on October 7, 1987. The parties stipulated that claimant's average weekly wage is \$516.15.

In his Decision and Order, the administrative law judge found that the notice of injury and claim were timely filed, and he awarded claimant compensation pursuant to Section 8(c)(13)(B) of the Act, 33 U.S.C. §908(c)(13)(B), for a 37.25 percent binaural hearing impairment. The administrative law judge also awarded interest on outstanding past due benefits, medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, and a penalty pursuant to Section 14(e) of the Act, 33 U.S.C. §914(e).

Claimant's counsel subsequently filed a fee petition for work performed at the administrative law judge level, requesting a fee for 16.75 hours of services rendered at \$125 per hour, plus expenses of \$33, for a total fee of \$2,126.75. Employer thereafter submitted objections to counsel's fee request. In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge, addressing employer's objections to the fee requested, reduced the hourly rate sought by claimant's counsel, Rebecca J. Ainsworth and John F. Dillon, to \$100, and reduced the time requested by 2.62 hours; the administrative law judge thus awarded claimant's counsel a fee of \$1,450.50, representing 1.5 hours of legal services by Lowry Lomax at \$125 per hour and 12.63 hours of legal services by Rebecca J. Ainsworth and John F. Dillon at \$100 per hour, plus \$33 for expenses.

On appeal, employer contends that the fee awarded is excessive as this was a routine hearing loss case, and it incorporates by reference into its appellate brief the arguments it made below regarding the number of hours and the hourly rate requested. Claimant responds, urging affirmance.

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.² 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). Thus, while the complexity of issues should be considered by the administrative law judge, it is only one of the relevant factors. *See generally Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). As the administrative law judge specifically accounted for the lack of complexity of the case in reducing the \$125 hourly rate sought for Rebecca J. Ainsworth and John F. Dillon 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 \$125 for Lowry Lomax and \$100 for his associates, and we accordingly affirm the hourly rates awarded. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

We also reject employer's contention that the time spent in certain discovery-related activity on September 19, 1989, and time spent at the hearing on October 3, 1989 was either unnecessary or

excessive.³ The administrative law judge considered all of employer's objections, reduced some entries 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 administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge