

GRADY RENFROE)	BRB No. 91-1877
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	
)	
)	
RICHARD L. GOFF)	BRB No. 91-1890
)	
Claimant-Respondent)	
)	
v.)	
)	DATE ISSUED:
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeals of the Supplemental Decisions and Orders Awarding Attorney's Fees of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

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

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

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

*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).

PER CURIAM:

Employer appeals the Supplemental Decisions and Orders Awarding Attorney's Fees (89-LHC-3301, 89-LHC-3303) of Administrative Law Judge C. Richard Avery rendered on claims filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act).¹ An award of an attorney's fee 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 Renfroe, a former chipper and chipping supervisor for employer, sought compensation under the Act for a work-related noise-induced hearing loss. On December 9, 1986, claimant Renfroe filed a claim for a 20.6 percent binaural hearing impairment based on the results of a December 3, 1986 audiogram and provided employer with notice of his injury that same day. Employer filed its Form LS-202, First Report of Injury on December 17, 1986. A subsequent audiometric evaluation performed on July 7, 1987, revealed an 18.75 percent binaural hearing impairment.² Employer did not make any voluntary payments of disability compensation. On March 6, 1989, employer filed its Form LS-207, Notice of Controversion. On August 3, 1989, the case was referred to the Office of Administrative Law Judges for a formal hearing. In his Decision and Order, the administrative law judge averaged the results of the two audiometric evaluations of record and awarded claimant Renfroe compensation for a seven percent whole person impairment under Section 8(c)(23) of the Act, 33 U.S.C. §908(c)(23). The administrative law judge additionally awarded claimant medical expenses and interest, and found employer liable for an assessment under Section 14(e).

¹We consolidate for purposes of decision employer's appeal of the Supplemental Decision and Order Awarding Attorney's Fees in *Renfroe v. Ingalls Shipbuilding, Inc.*, BRB No. 91-1877, and employer's appeal of the Supplemental Decision and Order Awarding Attorney's Fees in *Goff v. Ingalls Shipbuilding, Inc.*, BRB No. 91-1890. *See* 20 C.F.R. §802.104.

²Dr. Gordon Stanfield interpreted this audiogram as showing a 13.3 percent binaural impairment. The administrative law judge found that in arriving at this figure, Dr. Stanfield arbitrarily used the test results from claimant's right ear as representative of the noise-induced hearing loss claimant suffered in both ears because he felt that a portion of the higher loss in the left ear was attributable to another cause. The administrative law judge determined that under current case law there was no reason to factor out the unrelated cause. As the parties agreed that the true test results revealed a binaural hearing loss of 18.75 percent, he used this figure in determining the extent of claimant Renfroe's hearing loss. Decision and Order at 2. *See* Tr. at 5-7, 9-11, 12.

Claimant Renfroe's counsel subsequently submitted an attorney's fee petition to the administrative law judge, requesting \$3,349.25, representing 26.5 hours of services at an hourly rate of \$125 and \$36.75 in expenses. Employer filed objections to counsel's fee petition. In a Supplemental Decision and Order Awarding Attorney's Fees, after considering employer's specific objections to the fee request, the administrative law judge disallowed 1.5 of the 2 hours claimed to attend the September 25, 1990 hearing, reduced the hourly rate to \$100, and disallowed the requested expenses as office overhead, thereby awarding claimant's counsel a fee of \$2,500, representing 25 hours at \$100 per hour.

Claimant Goff sought compensation under the Act for a work-related hearing loss. On September 2, 1987, claimant Goff notified employer of his injury and filed his claim for noise-induced hearing loss that same day. Employer filed its notice of controversion on July 22, 1987. The case was referred to the Office of Administrative Law Judges on August 5, 1989. On February 7, 1991, the parties submitted a Petition to Approve Compromise Settlement and on February 15, 1991, the administrative law judge issued a Decision and Order approving the proposed settlement agreement. Pursuant to the terms of the parties' agreement, employer agreed to pay claimant Goff \$7,110.82 in compensation and \$682.21 in interest for any hearing loss which claimant may have sustained while in its employ, bi-weekly benefits in the amount of \$64.56 commencing January 19, 1991, future medical expenses related to the present injury under Section 7 of the Act, 33 U.S.C. §907, and an attorney's fee payable to claimant's counsel.

Claimant Goff's counsel subsequently submitted a fee petition to the administrative law judge, requesting \$3,453.75, representing 27.63 hours of services performed at an hourly rate of \$125. Employer thereafter filed objections to counsel's fee petition. In a Supplemental Decision and Order, the administrative law judge considered employer's specific objections to the fee request, reduced the hourly rate to \$100, and otherwise found that the fee requested was reasonable. Therefore, he awarded claimant's counsel \$2,763, representing 27.63 hours at \$100 per hour. Additionally, the administrative law judge rejected claimant Goff's counsel's request for an additional hour of services claimed for filing a response to employer's objections.

In both cases, employer challenges the amount of the attorney's fee awarded by the administrative law judge on various grounds, incorporating the objections it made below.³ Claimants respond, urging affirmance.

Employer argues in each case that the lack of complexity of the case mandates a reduction or disallowance of the amount of the fee awarded to claimant's counsel. 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

³We need not address the administrative law judge's award of benefits for claimant Renfroe's permanent partial disability under 33 U.S.C. §908(c)(23), as the parties have not appealed the findings regarding the degree of impairment or applicable average weekly wage. *Cf. Bath Iron Works Corp. v. Director, OWCP*, __ U.S. __, 113 S.Ct. 692, 26 BRBS 151 (CRT)(1993)(all hearing loss properly compensated under 33 U.S.C. §908(c)(13)).

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 to \$100 in both cases, employer's assertion that the complexity of the case does not warrant the fee awarded is rejected.

We also reject employer's contention that the time spent in certain discovery-related activity, trial preparation, and preparation and review of various correspondence and legal and medical documents was either unnecessary or excessive.⁴ The administrative law judge considered the totality of employer's objections in both cases, disallowed 1.5 hours sought by counsel in *Renfroe* and found the remaining services rendered by claimants' counsel in *Renfroe* and all services claimed in *Goff* to be reasonable. With the exception of .25 hours which the administrative law judge erroneously awarded in *Renfroe* for review of employer's petition for second fund relief on November 7, 1989, we decline to disturb these rational determinations.⁵ *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). As claimant has no interest in the source of his compensation payments, the fee award in *Renfroe* is modified to reflect the disallowance of the aforementioned .25 hours awarded by the administrative law judge; counsel is accordingly entitled to a fee for 24.75 hours of services.

⁴In *Renfroe*, employer objects to 2 hours allegedly allowed for the preparation of a motion on December 20, 1991. The hearing was held on September 25, 1990, and no such item appears in the fee petition. In *Goff*, employer also objects to an award for services rendered on September 24, 1989. Employer is apparently referring to services rendered on September 29, 1989, which the administrative law judge specifically addressed in entering the fee award.

⁵Employer's contention that the fee awarded by the administrative law judge is excessive in view of the benefits awarded, is raised for the first time on appeal. *See Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993) (*en banc*) (Brown and McGranery, JJ., concurring and dissenting); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179, 182 (1993); *Clophus v. Amoco Production Co.*, 21 BRBS 261, 265-266 (1988). We note, however, that claimant Renfroe, who was 64 years old at the date of the filing audiogram, was awarded a continuing award of \$14.12 per week, or over \$700 per year, by the administrative law judge, and would have been owed about \$3000 by the time of the issuance of the administrative law judge's Decision and Order, plus a Section 14(e) penalty from December 9, 1986, the date employer knew of the injury, until March 6, 1989, the date of controversion. Claimant Goff was awarded \$7,110.82 in back compensation and \$682.61 in interest, as well as bi-weekly benefits of \$64.56 beginning January 19, 1991. We do not view either award as insubstantial, and the fee awarded by the administrative law judge in each case is not unreasonable in light of the benefits obtained.

Employer also contends that the \$100 hourly rate awarded by the administrative law judge is excessive and asserts that \$75 to \$80 hourly rate would be more in line with reasonable and customary charges in the Pascagoula area. The administrative law judge specifically determined in both cases that the requested hourly rate of \$125 was excessive and determined that a \$100 rate was reasonable and appropriate for all attorney services claimed. As employer has provided no support for its allegation of excessiveness, we hold that employer has not met its burden of showing that the hourly rate awarded and the total fee awarded is unreasonable. *See Maddon*, 23 BRBS at 55; *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990). Finally, for the reasons set forth in *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), we also reject employer's assertion regarding the quarter-hour minimum billing method employed by claimants' counsel.⁶

Accordingly, the Supplemental Decisions and Orders Awarding Attorney's Fees in *Renfro v. Ingalls Shipbuilding, Inc.*, BRB No. 91-1877, and *Goff v. Ingalls Shipbuilding, Inc.*, BRB No. 91-1890, are affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge

⁶We note that in both cases employer attached a copy of an article from a Mississippi Defense Lawyers Association newsletter to its objections; this article, however, does not support employer's contention that the fee requested in the instant cases was unreasonable.