

BOBBY P. SAUCIER)	
)	
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 Richard D. Mills, Administrative Law Judge, United States Department of Labor.

John F. Dillon (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Paul M. Franke, Jr. and Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for 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 (88-LHC-2816) 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).

This case is on appeal to the Board for the second time. In the Decision and Order Awarding Benefits, the administrative law judge awarded benefits under Section 8(c)(13), 33 U.S.C. 908(c)(13), for a 9.7 percent binaural hearing loss at a compensation rate of \$201.78 per week for 19.4 weeks, and ordered employer to pay a Section 14(e), 33 U.S.C. §914(e), penalty. The administrative law judge also ordered employer to pay medical expenses and interest. In *Saucier v. Ingalls Shipbuilding, Inc.*, BRB No. 90-201 (Oct. 24, 1991) (unpublished), the Board modified the administrative law judge's award of benefits under Section 8(c)(13) to an award under Section 8(c)(23), 33 U.S.C. §908(c)(23), to reflect a 3 percent impairment of the whole person. *See Ingalls Shipbuilding, Inc. v. Director, OWCP*, 898 F.2d 1088, 23 BRBS 61 (CRT)(5th Cir. 1990). The

Board affirmed the administrative law judge's award of a Section (14)(e) penalty, medical benefits and interest.

Claimant's counsel subsequently sought an attorney's fee of \$1337, representing 10.5 hours at \$125 per hour, for work performed before the administrative law judge in connection with claimant's hearing loss claim. In the Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge awarded counsel a fee of \$563.75, representing 5.125 hours at an hourly rate of \$110, plus expenses of \$24.50. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Employer contends that claimant is not entitled to any attorney's fee because he did not successfully prosecute his claim, and, in the alternative, argues that the attorney fee awarded is excessive. Claimant responds, urging affirmance, and additionally contends he is entitled to interest on the attorney's fee award, due from the date of entry of the award.

On appeal, employer contends claimant did not successfully prosecute his claim because on October 14, 1987, employer voluntarily commenced payment of benefits to claimant based on a 9.35 percent binaural hearing impairment which converts to a 3 percent whole man impairment, and the Board, in its initial decision in this case, awarded benefits for a 3 percent whole man impairment. Employer therefore contends that claimant did not obtain additional compensation.¹

We reject employer's contention. Under Section 28(b), when employer pays or tenders payment of compensation without an award, employer remains liable for an attorney's fee if the employee successfully obtains greater compensation than that originally paid or tendered by employer. 33 U.S.C. §928(b); *Caine v. Washington Metropolitan Area Transit Authority*, 19 BRBS 180 (1987). In this case, despite the Board's modification of the administrative law judge's award of disability benefits to an amount equivalent to that which employer voluntarily tendered, claimant succeeded in obtaining a Section 14(e) penalty, medical expenses and interest. These benefits constitute additional compensation on which to base an attorney's fee award payable by employer. *Ingalls Shipbuilding, Inc. v. Director, OWCP (Baker)*, 991 F.2d 163, 27 BRBS 14 (CRT) (5th Cir. 1993); *Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61 (1991). Accordingly, claimant's counsel is entitled to an attorney fee award payable by employer.

After considering employer's remaining objections to the number of hours awarded, and to the hourly rate, we reject these contentions, as it has not been 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). Further, we hold that claimant is not entitled to interest on the attorney's fee award. *Fairley*, 25 BRBS at 61.

¹Employer did not raise this objection before the administrative law judge. Nonetheless, the issue is properly before the Board as employer filed its objections to counsel's fee petition prior to the time the Board modified the administrative law judge's decision to reflect claimant's entitlement to benefits pursuant to Section 8(c)(23).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge