

JOE SMITH)	
)	
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.

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

Paul M. Franke, Jr. (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 (90-LHC-2957) 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).

Claimant filed a claim under the Act seeking benefits for a noise-induced hearing loss. While the case was pending before the Office of Administrative Law Judges, the parties filed a joint motion to remand which was accepted by the administrative law judge; accordingly, the administrative law judge remanded the case to the district director for appropriate disposition.

Claimant's counsel thereafter submitted a fee petition to the administrative law judge. Counsel requested an attorney's fee of \$2,890.50, representing 23 hours of services at \$125 per hour, and \$15.50 in expenses. Employer filed objections to the fee. Claimant replied, and sought a fee for an additional hour of services. In a Supplemental Decision and Order, the administrative law judge

reduced the number of hours sought in the fee petition by 8.375, reduced the hourly rate sought to \$110, and awarded claimant's counsel an attorney's fee of \$1,608.70, plus the requested expenses.

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

Employer initially contends that the fee awarded is excessive, maintaining that the case was routine, uncontested, and not complex. 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 the award of an attorney's fee 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, the complexity of the legal issues is but one factor to be considered when awarding an attorney's fee. *See* 20 C.F.R. §702.132; *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). In the instant case, the administrative law judge considered the complexity of the case in reducing counsel's hourly rate from \$125 to \$110. Contrary to employer's contention, moreover, this case was not uncontested as employer did not voluntarily pay compensation.¹ We, therefore, reject employer's argument that the awarded fee must be further reduced on this basis.

Employer next objects to counsel's minimum quarter-hour billing method. Although counsel submitted a fee petition using this method of billing, the administrative law judge's decision to reduce entries for time spent preparing and reviewing routine correspondence on seven different dates from one-quarter to one-eighth of an hour is in compliance with the unpublished fee order 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). *See also Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995) (unpublished). We therefore decline to further reduce these entries on this basis. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

¹Contrary to employer's contention, the instant claim was not uncontested by employer; rather, employer controverted the claim and only paid claimant compensation approximately eleven months after the case was transferred to the Office of Administrative Law Judges.

Employer also challenges the number of hours requested by counsel and approved by the administrative law judge. In this regard, employer contends that the time spent in certain discovery-related activity, in trial preparation, and in reviewing and preparing various legal documents was either unnecessary or excessive, or clerical in nature. After evaluating claimant's fee request in light of the regulatory criteria of 20 C.F.R. §702.132 and employer's specific objections, the administrative law judge disallowed 8.375 hours sought by counsel, a reduction of approximately 36 percent, and found the remaining itemized services to be reasonable and necessary. We decline to further reduce or disallow the hours approved by the administrative law judge, as employer's assertions are insufficient to meet its burden of proving that the administrative law judge abused his discretion in this regard. *See Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).²

Lastly, we reject employer's assertion that the awarded hourly rate was excessive and that a rate of \$75 to \$80 would be more in line with the reasonable and customary charges in counsel's area of practice. The administrative law judge determined that the hourly rate of \$125 sought by claimant's counsel was excessive, and awarded counsel an hourly rate of \$110. As employer's mere assertion that the awarded rate does not conform to the reasonable and customary charges in the area where this claim arose is insufficient to meet its burden of proving that the rate is excessive, we affirm the rate awarded by the administrative law judge. *See Maddon*, 23 BRBS at 55; *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

²We reject employer's argument that the administrative law judge must base his fee award in this case upon the decision rendered by another administrative law judge in *Cox Ingalls Shipbuilding, Inc.*, 88-LHC-3335 (Sept. 5, 1991), for the reasons stated in *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, *modifying in part on recon.*, 28 BRBS 27 (1994). 33 U.S.C. §928(c).