

GEORGE S. HICKS)	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED:
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
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 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-0203) 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. By Order of Remand dated October 3, 1991, the administrative law judge accepted the parties Joint Motion to Remand which states that compensability has been accepted and employer has made payment to claimant for the full amount due; accordingly, the administrative law judge remanded the case to the district director for appropriate disposition.

Thereafter, claimant's counsel submitted a fee petition to the administrative law judge, requesting an attorney's fee of \$2,802.00, representing 21.5 hours of services at a rate of \$125 per hour, plus \$114.50 in expenses. Employer filed objections to the requested fee, challenging both the requested hours and hourly rate. In a Supplemental Decision and Order, the administrative law

judge addressed employer's specific objections, reduced the number of hour sought by 7.5, reduced the hourly rate sought to \$110, and awarded claimant an attorney's fee of \$1,540, 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 and further requesting that interest be assessed on its fee. Employer replies, urging denial of claimant's request for interest.¹

Employer 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 any 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). In the instant case, the administrative law judge considered the complexity of the case in reducing counsel's requested hourly rate from \$125 to \$110. Moreover, contrary to claimant's contention, this was not an uncontested case as employer did not voluntarily pay compensation. We, therefore, reject employer's contention that the awarded fee must be further reduced on this basis.

Employer additionally challenges the number of hours requested by claimant's counsel and approved by the administrative law judge.² In considering counsel's fee petition, the administrative law judge addressed employer's specific objections, and reduced the number of hours requested by 7.5. Employer's assertions on appeal are insufficient to meet its burden of proving that the administrative law judge abused his discretion in this regard; thus, we decline to further reduce or disallow the hours approved by the administrative law judge. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

We also reject employer's assertion that the awarded hourly rate is excessive. The administrative law judge determined that the hourly rate of \$125 sought by claimant's counsel was excessive given the routine and uncomplicated nature of the compensation claim in the legal community where the case was tried, and awarded counsel an hourly rate of \$110, finding this rate to be fair and reasonable after taking into account all the factors for this hearing loss case. As

¹Claimant's contention that employer should be liable for interest on the attorney's fee awarded by the administrative law judge pursuant to *Guildry v. Booker Drilling Co. (Grace Offshore Co.)*, 901 F.2d 485, 23 BRBS 82 (CRT)(5th Cir. 1990), is rejected for the reasons stated in *Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61, 65 (1991) (Decision on Remand). *See also Hobbs v. Stan Flowers Co., Inc.*, 18 BRBS 65 (1986), *aff'd sub nom. Hobbs v. Director, OWCP*, 820 F.2d 1528 (9th Cir. 1987).

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 v. 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).

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).

Lastly, employer objects to counsel's quarter-hour minimum billing method. In its unpublished order in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990), the United States Court of Appeals for the Fifth Circuit stated that, generally, attorneys should bill no more than one-eighth hour for review of a one-page letter and one-quarter hour for writing a one-page letter. The Fifth Circuit recently stated that this fee order is considered to be circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (unpublished). Counsel's fee petition generally conforms to these guidelines. Moreover, the administrative law judge, pursuant to employer's specific objections, reduced entries for time spent reviewing letters.³ Therefore, these entries need not be further reduced.

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

³The administrative law judge allowed one-quarter hour for writing letters, and the Fifth Circuit has stated that this is a reasonable amount of time for a one-page letter. See *Fairley*, slip op. at 2.