

HERMAN L. ODOM	)	
	)	
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 Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

John F. Dillon (Maples & 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 (88-LHC-3764) of Administrative Law Judge Kenneth A. Jennings 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 and Dry Dock Co.*, 12 BRBS 272 (1980).

On April 21, 1988, claimant filed a claim for benefits under the Act for a noise-induced hearing loss. The parties stipulated that claimant's average weekly wage is \$552.04, and the administrative law judge awarded claimant benefits for a .9 percent binaural impairment pursuant to Section 8(c)(13)(B) of the Act, 33 U.S.C. §908(c)(13)(B).

Thereafter, claimant's counsel submitted a fee petition to the administrative law judge, requesting an attorney's fee of \$3,340.00, representing 26.5 hours of services at \$125 per hour and \$27.50 in expenses. Employer filed objections to the fee. Claimant replied, and sought a fee for an additional hour of services. In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge reduced the number of hours sought by 8, reduced the hourly rate for 2.375 hours of work to \$100,<sup>1</sup> and awarded an attorney's fee of \$2,253.13, 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 first contends that the fee awarded is excessive, maintaining that the case was routine and uncontested.<sup>2</sup> An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 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). In the instant case, the administrative law judge specifically set forth these criteria prior to reducing the number of hours and part of the hourly rate sought by claimant's counsel. Additionally, we note that contrary to employer's contention, this was not an uncontested case, in that employer did not voluntarily pay compensation. We therefore reject employer's contention that the awarded fee must be further reduced on this basis.

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<sup>1</sup>In his Supplemental Decision and Awarding Attorney Fees, the administrative law judge found that a rate of \$125 per hour for work performed by Lowry Lomax, and a rate of \$100 per hour for work performed by Rebecca J. Ainsworth and John F. Dillon, was reasonable and appropriate in the geographic area involved.

<sup>2</sup>Employer also contends that the awarded fee is excessive because the award of benefits is nominal. Employer failed to raise this contention in its objections to the fee petition which it filed with the administrative law judge; thus, we will not address this contention since it 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), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd mem. sub. nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Clophus v. Amoco Productions Co.*, 21 BRBS 261 (1988).

Employer additionally challenges the number of hours requested by counsel and approved by the administrative law judge.<sup>3</sup> In considering counsel's fee petition, the administrative law judge specifically stated that he considered each of employer's objections and thereafter reduced the number of hours requested by 8. 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 further reject employer's assertion that the awarded hourly rates are excessive. The administrative law judge rationally determined that the hourly rate of \$125 sought for work performed by Lowry Lomax was appropriate, finding this rate to be fair and reasonable given the nature of the case, the experience of the attorney and the quality of the representation. Similarly, the administrative law judge reasonably determined that the hourly rate of \$125 sought for work performed by Rebecca J. Ainsworth and John F. Dillon was excessive, and accordingly, the administrative law judge reduced their hourly rates to \$100. As employer's mere assertion that the awarded rates do 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 rates awarded by the administrative law judge. *See Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993); *Maddon*, 23 BRBS at 55; *see generally Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

Lastly, employer objects to counsel's use of the minimum quarter-hour 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). While, in the instant case, the administrative law judge failed to specifically consider employer's objection, we note that claimant's fee petition bills in minimum increments of one-eighth of an hour. We therefore hold that the fee petition in this case complies with the aforementioned criteria.

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<sup>3</sup>We 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).

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