

BRB No. 92-1306

ROY L. ROBERTSON)	
)	
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 & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

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

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (90-LHC-3157) 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 and Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, a retiree, was exposed to workplace noise at employer's facility in the course of his employment and he filed a claim for benefits under the Act. After the case's referral to the Office of Administrative Law Judges, claimant and employer filed a Joint Petition to Approve Compromise Settlement with the administrative law judge, requesting approval of a settlement agreement pursuant to 33 U.S.C. §908(i). The administrative law judge's Decision and Order Approving Compromise Settlement, dated May 28, 1991, approved the agreement awarding claimant \$2,348.07 plus interest in compensation through March 28, 1991, continuing bi-weekly benefits of \$38.17, reasonable and necessary medical treatment, and an attorney's fee.

Subsequent to the approval of the settlement agreement, claimant filed a fee petition for work performed before the administrative law judge. He requested \$1,360.75, representing 10.75 hours of services rendered at a rate of \$125 per hour plus \$17 in expenses. Employer thereafter filed objections to the fee request.

In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge, addressing the fee petition and employer's objections, reduced the hourly rate to \$110 and the number of hours to 7.875. The administrative law judge otherwise allowed the fee requested, awarding \$866.25, representing 7.875 hours of legal services at \$110 per hour plus \$17 in expenses.

On appeal, employer, incorporating by reference the objections it raised below, contends that the administrative law judge's attorney's fee award is excessive and should be reduced because the case was routine, uncomplicated and uncontested. Employer also objects to various entries in the fee petition and to the hourly rate awarded. Claimant responds, urging affirmance of the fee awarded.

Employer initially contends that the lack of complexity of the instant case mandates a reduction in the amount of the fee awarded to claimant's counsel. 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 the award of any attorney's fee shall be reasonably commensurate with the necessary work performed and shall take into account the quality of the representation, the complexity of the issues 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). While the complexity of the 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). In this case, the administrative law judge considered this specific objection in reducing counsel's requested hourly rate from \$125 to \$110; we, therefore, reject employer's contention that the awarded fee must be reduced on this basis. *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179, 181 (1993), *aff'd mem.*, No. 93-4367 (5th Cir. Dec. 9, 1993); *LeBatard v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 10 BRBS 317 (1979).

Employer also asserts that the awarded hourly rate is excessive.¹ The administrative law judge determined that the hourly rate of \$125 sought by claimant's counsel was excessive, and thereafter awarded counsel an hourly rate of \$110, finding this rate to be fair and reasonable in the area where this claim arose. 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 to counsel.² *See Welch v. Penzoil Co.*, 23 BRBS 395 (1990); *Maddon v. Western Asbestos*

¹We note that employer has 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 case was unreasonable.

²We reject employer's argument that the administrative law judge must base his fee award in

Co., 23 BRBS 55 (1989).

Employer additionally challenges the number of hours requested by counsel and approved by the administrative law judge. In considering counsel's fee petition, the administrative law judge set forth employer's specific objections and thereafter reduced the number of hours requested by 2.875, a reduction of over 26 per cent. Employer's assertions on appeal are insufficient to meet its burden of proving that the administrative law judge abused his discretion in this regard and we decline to reduce or disallow the hours approved by the administrative law judge. *See Madden*, 23 BRBS at 62; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Employer also objects to counsel's use of the quarter-hour minimum billing method. Claimant's counsel submitted a fee petition using this method of billing, and the administrative law judge, citing to 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), reduced counsel's requested time for reviewing a letter from one-quarter to one-eighth of an hour. *See also Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995). We therefore decline to further reduce the hours approved by the administrative law judge on this basis. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

this case upon the decision rendered by another administrative law judge in *Cox v. Ingalls Shipbuilding, Inc.*, 88-LHC-3335 (Sept. 5, 1991), as fees for legal services must be approved at each level of the proceedings by the tribunal before which work was performed. 33 U.S.C. §928(c), 20 C.F.R. §702.132; *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, *modifying in part on recon.*, 28 BRBS 27 (1994).

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

JAMES F. BROWN
Administrative Appeals Judge