

BRB No. 92-1929

CHARLES A. VERBECK)
)
 Claimant-Respondent)
)
 v.)
)
 INGALLS SHIPBUILDING,)
 INCORPORATED) DATE ISSUED:
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Ben H. Walley,
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 BROWN Administrative
Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand Awarding Benefits (88-LHC-3361) of
Administrative Law Judge Ben H. Walley 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, a retiree, suffered a work-related hearing loss while working for employer. On
December 6, 1986, claimant notified employer of his injury and filed a claim for benefits for a 12.7
percent binaural loss based on the results of an audiometric examination administered on December
6, 1986 by Dr. Wold. The case was transferred to the Office of Administrative Law Judges on
August 25, 1988. Claimant and employer sought summary judgment, asserting that the only issue to
be resolved was whether claimant's hearing loss should be compensated as a scheduled injury
pursuant to Section 8(c)(13), 33 U.S.C. §908(c)(13), or as a non-scheduled injury pursuant to
Section 8(c)(23), 33 U.S.C. §908(c)(23). In an Order on Motion for Summary Judgment, the
administrative law judge found claimant should be compensated for a 12.7 percent binaural loss

under Section 8(c)(13), and the administrative law judge remanded the case to the district director for the entry of an appropriate order.

Claimant submitted an attorney's fee petition for work performed before the administrative law judge, requesting a fee of \$660.25 for 6.5 hours at an hourly rate of \$100, plus 10.25 in costs. Employer filed objections to the fee petition. In a Supplemental Decision And Order Awarding Attorney's Fee, the administrative law judge disallowed the requested costs, and awarded claimant's counsel a fee of \$650.

The Director, Office of Workers' Compensation Programs, appealed, and employer cross-appealed, the administrative law judge's Order on Motion for Summary Judgment, to the Board. Employer also appealed the Supplemental Decision and Order Awarding Attorney's Fee. Employer subsequently filed a Motion to Remand to the administrative law judge for further action consistent with the decision of the United States Court of Appeals for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, 898 F.2d 1088, 23 BRBS 61 (CRT) (5th Cir. 1990). Claimant objected to employer's motion, and also requested an assessment pursuant to Section 14(e) of the Act, 33 U.S.C. §914(e).

In an Order dated September 12, 1991, the Board remanded the case to the administrative law judge for further proceedings consistent with *Fairley*, 898 F.2d at 1088, 23 BRBS at 61 (CRT). *Verbeck v. Ingalls Shipbuilding, Inc.*, BRB Nos. 89-591/A (Sept. 12, 1991). The Board vacated the attorney's fee award and also instructed the administrative law judge to consider claimant's entitlement to a Section 14(e) penalty. The Board stated that the administrative law judge should reconsider the fee award in light his decision on remand.

In the Decision and Order on Remand Awarding Benefits, the administrative law judge found that claimant's 12.7 percent binaural impairment converts to a 4 percent impairment of the whole person under the American Medical Association *Guides to the Evaluation of Permanent Impairment*, and awarded claimant permanent partial disability benefits pursuant to Section 8(c)(23). The administrative law judge also awarded claimant a Section 14(e) penalty and he reaffirmed the attorney's fee award of \$650.

Employer appeals the administrative law judge's award of the attorney's fee, incorporating the objections it made below into its appellate brief. Claimant responds, urging affirmance.

On appeal, employer contends that the fee award is excessive in view of the fact that this was a routine hearing loss claim involving undetailed form pleadings. 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 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 entering his fee award, the administrative law judge specifically took the regulatory criteria into account in determining that counsel's requested hourly rate of \$100 is reasonable and appropriate. *See* Supplemental Decision and Order Awarding Attorney's Fee at 2. We therefore reject employer's contention that the fee should be reduced on this basis. Moreover, employer has not established that the administrative law judge

abused his discretion in awarding an hourly rate of \$100, and we accordingly affirm the hourly rate awarded.¹ See *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Employer also objects to counsel's use of the quarter-hour minimum billing method. In *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4495 (5th Cir. July 25, 1990)(unpublished), the United States Court of Appeals for the Fifth Circuit stated that attorneys, generally, may not bill more than one-eighth hour for review of a one-page letter and one-quarter hour for preparation of a one-page letter. The court recently stated that its fee order in *Fairley* 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). The one-half hour charge on August 29, 1988, for review of a letter from the district director referring the case to the Office of Administrative Law Judges is excessive under this criteria, and is reduced to one-eighth of an hour. The remaining entries are not excessive under the Fifth Circuit's guidelines.

We also reject employer's contention that the time spent in certain discovery-related activity and review and preparation of certain documents was either unnecessary or excessive. The administrative law judge considered the totality of employer's objections, and found the services rendered by claimant's counsel to be reasonable and necessary. We decline to disturb this rational determination. *Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

¹We also reject employer's reliance on the decision of Judge A.A. Simpson in *Cox v. Ingalls Shipbuilding, Inc.*, 88-LHC-3335 (Sept. 5, 1991). The decision of an administrative law judge in a different case is not binding upon the administrative law judge or the Board in this case. 33 U.S.C. §928(c); 20 C.F.R. §702.132.

Accordingly, the administrative law judge's Decision and Order on Remand Awarding Benefits is modified to reflect the disallowance of an attorney's fee for three-eighths of an hour, and is otherwise affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge