

REYNOLD J. BOSARGE)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED: _____
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

John F. Dillon (Maples and Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for 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-1875) of Administrative Law Judge C. Richard Avery 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 will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for benefits under the Act, contending that he sustained a noise-induced, work-related binaural impairment. After the claim was referred for a hearing, employer paid claimant \$9,232.85 for a binaural impairment pursuant to Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13), and accepted responsibility for medical benefits under Section 7 of the Act, 33 U.S.C. §907. Thereafter, the parties, stating that no issues remained in dispute, filed a Joint Motion to Remand the case to the district director for appropriate disposition. In an Order dated June 14, 1991, the administrative law judge remanded this case to the district director.

Claimant's counsel filed a fee petition for work performed before the administrative law judge, requesting \$2,340.25, representing 18.63 hours of services rendered at \$125 per hour, and

\$11.50 in expenses. Employer filed no objections. In his original Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge reduced the hourly rate to \$110, disallowed the \$11.50 claimed for expenses as overhead, but otherwise allowed the fee requested, awarding claimant's counsel \$2,049.30, representing 18.63 hours of legal services at \$110 per hour.

Employer filed a motion for reconsideration, asserting that it did not receive the fee petition, and it filed objections to the fee request. The administrative law judge granted the motion for reconsideration, vacated his prior order and reconsidered the fee petition in light of employer's objections and claimant's reply, which included a request for an additional attorney's fee. The administrative law judge again awarded claimant's counsel \$2,049.30, representing 18.63 hours of legal services at \$110 per hour, but disallowed claimant's counsel's request for an additional fee.

On appeal, employer, incorporating by reference the objections it made below, contends that the administrative law judge's fee award is excessive and should be reduced because the case was routine and uncomplicated. Employer also contends that the administrative law judge's fee award is excessive because the ultimate award was by agreement of the parties after a voluntary payment by employer. Claimant responds, asserting that the attorney's fee award should be affirmed.

We reject employer's contention that the complexity of this case does not warrant the attorney's fee awarded by the administrative law judge. 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. The administrative law judge considered this specific objection in reducing counsel's hourly rate to \$110. We therefore reject employer's contention that the awarded fees must be reduced further on this basis. Moreover, we reject employer's assertion that the awarded hourly rates do not conform to the reasonable and customary charges in the area where the claim arose. This allegation is insufficient to meet employer's burden of proving that the rates are excessive, and we affirm the rates awarded to counsel by the administrative law judge. *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Next, we reject employer's contention that the administrative law judge's fee award should be reduced because the parties sought to have the case remanded to the district director after a voluntary payment by employer, and its challenge to counsel's quarter hour minimum billing method. We need not address these contentions as employer did not raise them before the administrative law judge and is not permitted to raise them for the first time on appeal. *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 in part. part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995).

We also reject employer's objections to various itemized entries.¹ The administrative law

¹We reject employer's reliance on the fee award of Administrative Law Judge A.A. Simpson, Jr., in *Cox v. Ingalls Shipbuilding, Inc.*, No. 88-LHC-3355 (Sept. 5, 1991). The amount of an attorney's fee award lies within the discretion of the body awarding the fee, and the decision of an administrative law judge regarding the fee is not binding precedent on another body in a different

judge ruled on the challenged entries, and we decline to disturb these rational determinations on appeal. *Maddon*, 23 BRBS at 62.

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