

CHARLES W. COLSON	)	
	)	
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 Quentin P. McColgin, Administrative Law Judge, United States Department of Labor.

John F. Dillon (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 DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (88-LHC-2218) of Administrative Law Judge Quentin P. McColgin 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's counsel sought an attorney's fee of \$2,403.25, representing 19 hours at \$125 per hour for work performed before the administrative law judge in connection with claimant's hearing loss claim. The administrative law judge awarded counsel a fee of \$1,575, representing 15.75 hours at an hourly rate of \$100, plus expenses of \$28.25. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant, incorporating his reply brief below, responds, urging affirmance of the fee award.

Employer's objections to the hourly rate awarded are rejected, as it has not been shown that the administrative law judge abused his discretion in this regard. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General*

*Dynamics Corp.*, 13 BRBS 97 (1981). Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour also is rejected, as the administrative law judge considered this objection, and reduced the time claimed to increments of one-eighth hour where he deemed such reductions appropriate, consistent with the criteria set forth in the decisions 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)(unpublished) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995)(unpublished).

Employer also argues that consideration of the quality of the representation provided and the complexity of the issues involved mandate a complete reversal or at least a substantial reduction of the fee awarded by the administrative law judge. We need not address these arguments, however, as they are being raised by employer 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 mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988). Inasmuch, however, as the administrative law judge neglected to consider whether the fee awarded was warranted in light of the amount of benefits obtained, and employer raised this objection below, the case must be remanded for him to reconsider the amount of the attorney's fee award. *See generally Ingalls Shipbuilding, Inc. v. Director, OWCP, [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT) (5th Cir. 1993). While claimant's counsel was fully successful before the administrative law judge in establishing claimant's right to disability compensation for a .3 percent binaural hearing loss calculated pursuant to 33 U.S.C. §908(c)(13)(B) based upon an average weekly wage of \$383.02, as well as past and future medical benefits, *see Hensley v. Eckerhart*, 461 U.S. 424 (1983), and the amount of a fee is not limited by the amount of compensation gained, *see Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993), the amount of benefits obtained is a relevant factor to be considered in determining the amount of an attorney's fee award under the regulatory criteria of 20 C.F.R. §702.132. *See Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994) (McGranery J., dissenting)(decision on recon.). We therefore vacate the Supplemental Decision and Order Awarding Attorney Fees, and remand the case for the administrative law judge to reconsider counsel's fee in light of the amount of benefits obtained.

Accordingly, the Supplemental Decision and Order of the administrative law judge is affirmed in part, and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge