

MELBA DOBY)	
(Widow of ROBERT D. DOBY))	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Second Supplemental Decision and Order Awarding Attorney Fees of Quentin P. McColgin, Administrative Law Judge, United States Department of Labor.

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 Second Supplemental Decision and Order Awarding Attorney Fees (88-LHC-2956) 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, a retiree, was exposed to workplace noise while employed at employer's facility, which prompted him to file a claim for benefits under the Act. In his Order Granting Summary Decision,¹ the administrative law judge awarded benefits under Section 8(c)(13), 33 U.S.C.

¹Both parties filed cross-motions for summary decision before the administrative law judge stating that the sole issue presented for formal adjudication is the legal issue of whether claimant is entitled to compensation for his hearing loss under Section 8(c)(23), 33 U.S.C. §908(c)(23), or Section 8(c)(13), 33 U.S.C. §908(c)(13).

§908(c)(13). Subsequent to that, employer paid claimant compensation benefits for a 20.63 percent binaural hearing loss at a compensation rate of \$151.33 per week. Employer appealed this decision to the Board, but later filed a Motion to Remand the case for further consideration 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). In an Order dated September 17, 1991, the Board remanded the case pursuant to employer's motion. *Doby v. Ingalls Shipbuilding, Inc.*, BRB No. 89-773 (September 17, 1991)(unpub. Order). Additionally, the Board instructed the administrative law judge to also consider claimant's entitlement to a Section 14(e), 33 U.S.C. §914(e), penalty. On remand, the administrative law judge awarded claimant compensation for a 20.6 percent binaural hearing loss under Section 8(c)(13) at a compensation rate of \$201.77 per week, as well as a Section 14(e) penalty.

Thereafter, claimant's counsel filed a fee petition for work performed before the administrative law judge on remand, requesting \$635.50 for 5 hours of services at \$125 per hour, plus expenses of \$10.50. Employer filed objections to counsel's fee request. In his Second Supplemental Decision and Order, the administrative law judge, after addressing employer's specific objections, awarded claimant's counsel a fee of \$357.50, representing 3.25 hours of services at \$110 per hour, 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 raised below into its appellate brief. Claimant has not responded to the appeal in this case.

Employer initially contends that the administrative law judge erred by not limiting the attorney's fee award to the nominal gain of benefits received by claimant on remand. On remand, the administrative law judge awarded benefits based upon a weekly compensation rate which is \$50.44 higher than the weekly compensation rate paid by employer following the issuance of the administrative law judge's initial decision. Moreover, claimant was awarded on remand a penalty under Section 14(e). Contrary to employer's contention, the difference in benefits awarded on remand from those previously paid by employer is not nominal, as claimant gained an additional \$2069.04 in compensation benefits. *See generally 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). We further note that the additional compensation received on remand is sufficient to support an award of an attorney's fee under Section 28(b), 33 U.S.C. §928(b). *See Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61 (1991) (decision on remand). Moreover, contrary to employer's contention, the amount of the fee under Section 28(b) is not limited to the amount of additional compensation gained, *Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994)(McGranery, J., dissenting)(decision on recon.), *appeal dismissed*, No. 94-40920 (5th Cir. Sept. 20, 1995), and the fee of \$357.50 awarded is not unreasonable in light of the award on remand.

Employer's remaining contentions regarding the number of hours and hourly rate awarded by the administrative law judge 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).

Accordingly, the administrative law judge's Second Supplemental Decision and Order Awarding Attorney's Fee is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge