

BRB Nos. 93-0185
and 96-0385

X. L. MELTON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING, INCORPORATED)	DATE ISSUED:
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeals of the Decision and Order Awarding Attorney Fees of Quentin P. McColgin, Administrative Law Judge, and the Compensation Order Award of Attorney's Fee of N. Sandra Ramsey, District Director, United States Department of Labor.

John F. Dillon and Rebecca J. Ainsworth (Maples & 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-1658) of Administrative Law Judge Quentin P. McColgin and the Compensation Order Award of Attorney's Fee (Case No. 6-105357) of District Director N. Sandra Ramsey 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).¹ 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. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel filed a Petition for Approval of Attorney's Fee for work performed before

¹By Order dated January 17, 1996, the Board consolidated employer's appeal of the administrative law judge's fee award, BRB No. 93-185, with employer's appeal of the district director's fee award, BRB No. 96-385. 20 C.F.R. §802.104.

the administrative law judge, requesting \$3,303.75, representing 26 hours at a rate of \$125 per hour and \$53.75 in expenses for work performed in connection with claimant's hearing loss claim. Claimant also filed a supplemental fee petition for work performed before the administrative law judge requesting \$156.25, representing 1.25 hours at a rate of \$125 per hour. Employer filed objections to the fee petition and supplemental fee petition. Claimant replied and sought a fee for an additional hour of services. In a Supplemental Decision and Order Awarding Attorney Fees, after considering employer's objections, the administrative law judge awarded counsel a total of \$1,675 for 16.75 hours at a rate of \$100 per hour, plus \$53.75 in expenses.

Claimant's counsel also filed a Petition for Approval of Attorney's Fee for work performed before the district director, requesting \$831.50, representing 8.25 hours at \$100 per hour and \$6.50 in expenses. Employer filed objections to the fee petition. In a Compensation Order Award of Attorney's Fee, the district director, after considering employer's objections, awarded a total fee of \$750, representing 7.5 hours at a rate of \$100 per hour, finding that attorney time prior to August 7, 1987 is chargeable to claimant and that claimant is liable to counsel for \$150 as a lien on his compensation award. 33 U.S.C. §928(c). Employer was held liable for a fee of \$600.

On appeal, employer challenges the fee awards of both the administrative law judge and the district director. Claimant responds, urging affirmance of both awards.

Employer first contends that as it voluntarily paid claimant \$3,624.95, its liability under Section 28(b) for any attorney's fee should be based solely on the difference between the amount voluntarily paid and the amount ultimately awarded.² Under Section 28(b) of the Act, 33 U.S.C. §928(b), when an employer voluntarily pays or tenders benefits and thereafter a controversy arises over additional compensation due, the employer will be liable for an attorney's fee if the claimant succeeds in obtaining greater compensation than that agreed to by employer. *See Tait v. Ingalls Shipbuilding, Inc.*, 24 BRBS 59 (1990); *Kleiner v. Todd Shipyards Corp.*, 16 BRBS 297 (1984). The Board has held that a fee award need not be limited to solely the monetary difference between the amount voluntarily paid and the amount awarded where a larger fee is reasonable for the work done to increase claimant's compensation. *Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994) (McGranery, J., dissenting) (decision on recon.). Moreover, we note that the gain in benefits in this case is not nominal as employer suggests, as the administrative law judge's award for a 19 percent binaural impairment resulted in compensation of \$10,868, in addition to a Section 14(e)

²We note that employer's contentions regarding Section 28(a), 33 U.S.C. §928(a), with respect to the district director's fee award were not raised below, *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988), and, moreover, that Section 28(a) is not applicable in this case, as Section 28(b) is the governing provision.

penalty and medical benefits, a significant gain over employer's voluntary payment. Thus, the awarded fee is reasonable in light of claimant's gain in compensation.

Employer also objects to counsel's use of the quarter-hour minimum billing method. In *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 90-4559 (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 Fifth Circuit subsequently stated in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table), that its fee order in *Fairley* is considered to be circuit court precedent. The one-quarter charges before the district director on September 23, 1987, January 15, 1988, November 15, 1988, December 8, 1988, May 26, 1989, June 13, 1989, and April 3, 1990, are excessive under the *Fairley* criteria, and we therefore reduce the entries to one-eighth hour each. The remaining entries awarded by the district director conform to the Fifth Circuit's guidelines. *See generally Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995). Moreover, the administrative law judge's award of a fee conforms to the criteria set forth in the decisions of the Fifth Circuit in *Fairley* and *Biggs*. After considering employer's remaining objections to the number of hours awarded, and to the hourly rate, we reject these contentions, as it has not shown that the administrative law judge or the district director abused his or her discretion in this regard. *See Ross*, 29 BRBS at 42; *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Accordingly, the district director's Compensation Order Award of Attorney's Fee is modified to reflect the disallowance of .875 of an hour and is otherwise affirmed. Employer is thus liable for a fee of \$512.50 for work performed before the district director. 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