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|-----------------------|---|--------------------|
| ERNEST H. LARSEN      | ) |                    |
|                       | ) |                    |
| 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 Richard D. Mills, 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 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 (89-LHC-2518) of Administrative Law Judge Richard D. Mills 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 \$3,910, representing 31 hours at \$125 per hour, and \$35 in expenses, 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 \$2,433.75, representing 22.125 hours at an hourly rate of \$110, plus expenses of \$35. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer initially contests its liability for the attorney's fee under Section 28(b), 33 U.S.C.

§928(b). The record reflects that employer voluntarily paid benefits for 68 weeks in an amount totalling \$2,614.92 for a 12 percent impairment of the whole man. Jt. Ex. 1. By virtue of subsequent proceedings before the United States Court of Appeals for the Fifth Circuit, the Board and the administrative law judge, claimant received greater compensation for a 35.08 percent binaural hearing impairment at an average weekly wage of \$269.60. Therefore, contrary to employer's contention, claimant was ultimately successful in obtaining greater compensation than employer voluntarily paid and claimant's counsel is entitled to an attorney's fee payable by employer under Section 28(b). *Hole v. Miami Shipyards Corp.*, 640 F.2d 769, 13 BRBS 237 (5th Cir. 1981).

Employer's further objection that any attorney's fee assessed against it must be based solely on the difference between the amount initially paid and the amount that was ultimately awarded was properly rejected by the administrative law judge, as the Board has held that a fee larger than this amount may be reasonable in a given case. *Ross*, 29 BRBS 42 (1995); *Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994)(McGranery, J., dissenting)(decision on recon.); *Mason v. Baltimore Stevedoring Co.*, 22 BRBS 413 (1989). The administrative law judge recognized that the award should reflect the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded, *see* 20 C.F.R. §702.132, and he considered these criteria in entering his fee award. Supplemental Decision and Order at 1.

Employer's objections to the number of hours and hourly rate awarded are rejected, as it has not shown that the administrative law judge abused his 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). 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 his award conforms to 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]*, 46 F.3d 66 (5th Cir. Jan. 12, 1995)(table).

Accordingly, the Supplemental Decision and Order of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge