

MACKIE L. MAPLES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:_____
INGALLS SHIPBUILDING,	)	
INCORPORATED	)	
	)	
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.

Rebecca J. Ainsworth (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-1437) 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 will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with the law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

In this hearing loss case, claimant was awarded disability and medical benefits and a Section 14(e), 33 U.S.C. §914(e), penalty. Thereafter, claimant's counsel filed a petition for an attorney's fee of \$3,154.75, representing 24.125 hours at a rate of \$125 per hour, plus \$13.50 in expenses, for work performed before the administrative law judge.<sup>1</sup> Employer filed its objections. The administrative law judge awarded counsel a fee of \$2,025, representing 20.25 hours of services at a rate of \$100 per hour, plus \$13.50 in expenses. Supp. Decision and Order. Employer appeals the fee award, incorporating by reference the arguments it made below, and claimant responds, urging affirmance.

<sup>1</sup>Counsel mistakenly totalled his fee request for 25.13 hours.

Initially, we reject employer's objection to the hourly rate awarded, as it has not shown that the administrative law judge abused his discretion in awarding a fee based on a rate of \$100 per hour. 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 next challenges the number of hours awarded, raising objections to specific entries and to the quarter-hour minimum billing method. Although the administrative law judge considered these objections, his award does not conform 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. 1995) (table). Moreover, we are unable to compute the fee awarded given his explanations.<sup>2</sup> Consequently, we vacate the administrative law judge's award of an attorney's fee, and we

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<sup>2</sup>Without reducing any entry in accordance with *Biggs* and *Fairley*, we calculate anywhere from 17.5 to 20 hours of services approved by the administrative law judge based on his decision. For example, the reduction of time for two motions to compel does not correspond with any entries in counsel's petition or with any objection made by employer. Additionally, it appears the administrative law judge awarded 2.5 hours for time at the formal hearing when counsel only requested two hours.

remand the case for him to re-evaluate the number of hours requested in light of employer's objections and the criteria of *Biggs* and *Fairley*, and to fully explain any reductions he makes.

Accordingly, the administrative law judge's attorney's fee award is vacated, and the case is remanded for further consideration. The hourly rate awarded is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge