

HAROLD P. ROBINSON)	
)	
Claimant-Petitioner)	
)	
v.)	
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INGALLS SHIPBUILDING, INCORPORATED)	DATE ISSUED:
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of A.A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof, P.C.), Mobile, Alabama, 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:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (92-LHC-2812) of Administrative Law Judge A.A. Simpson, Jr., 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 sought benefits under the Act for a noise-induced work-related hearing loss based on an audiogram administered on October 21, 1991, which revealed a 12.2 percent binaural impairment. A second audiogram administered on August 26, 1992 revealed that claimant suffered from a .62 percent binaural loss. In his Decision and Order, the administrative law judge credited the second audiogram and found that claimant sustained a work-related binaural hearing impairment of .62 percent. Thus, the administrative law judge awarded claimant permanent partial disability compensation pursuant to Section 8(c)(13)(B) of the Act, 33 U.S.C. §908(c)(13)(B), for a .62 percent binaural impairment, as well as medical benefits under Section 7 of the Act, 33 U.S.C. §907.

Subsequent to the administrative law judge's Decision and Order, claimant's counsel submitted a fee petition requesting an attorney's fee of \$2,672.50, representing 17 hours of legal services performed at \$150 per hour for lead counsel, .75 hour of legal services performed at an hourly rate of \$110 for associate counsel, and \$40 in expenses. Thereafter, employer filed objections to the fee petition. In a Supplemental Decision and Order, the administrative law judge considered employer's specific objections to the fee request, reduced the number of hours sought by counsel to 12.375, reduced the hourly rate sought for services rendered by lead counsel to \$110, and the hourly rate sought for services rendered by associate counsel to \$100, approved counsel's request for \$40 in expenses, and thereafter awarded claimant's counsel an attorney's fee of \$1,369.25.

On appeal, claimant challenges the reductions in his attorney's fee petition made by the administrative law judge. Employer responds, urging affirmance of the fee award.

Initially, claimant challenges the reductions made in the hourly rates sought. Specifically, claimant asserts that the administrative law judge erred in reducing the hourly rate sought by claimant's lead counsel to \$110, since the facts and legal issues in the instant claim were unique and complex, and the rate awarded is not commensurate with counsel's qualifications.

The complexity of legal issues is but one factor to be considered when awarding an attorney's fee. *See* 20 C.F.R. §702.132; *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). In the instant case, the administrative law judge specifically considered the complexity of the legal issues, as well as claimant's lead counsel's qualifications, in finding that an hourly rate of \$110 was commensurate with the services performed. Inasmuch as claimant's assertions that counsel's qualifications require higher hourly rates are insufficient to meet his burden of proving the hourly rates awarded by the administrative law judge were unreasonable, we affirm the rates awarded by the administrative law judge.¹ *See Ferguson v. Southern States Cooperative*, 27 BRBS 16 (1993); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993).

¹We reject claimant's reliance on fee awards issued by the administrative law judge in other cases. The amount of an attorney's fee award lies within the discretion of the body awarding the fee, and the decision of an administrative law judge regarding the amount of a fee in one case is not binding precedent on another body, or the same administrative law judge, in a different case. 33 U.S.C. §928(c).

Claimant next contends that the administrative law judge erred in reducing the hours requested in the fee petition. Specifically, claimant contends that the number of hours requested were not excessive, and that billing for review of the case file should be appropriately compensable. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done, the complexities of the legal issues involved, and the amount of benefits awarded. *See generally Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Parrott v. Seattle Joint Port Labor Relations Committee of the Maritime Ass'n*, 22 BRBS 434 (1989).

In his Supplemental Decision and Order, the administrative law judge reduced the time sought for review of pleadings, preparation of discovery, preparation for the hearing, as well as time sought for review of the case file. In each instance, the administrative law judge set forth the rationale upon which he relied in reducing the hours sought by counsel. Thus, we hold that claimant's assertions on appeal are insufficient to meet his burden of proving that the administrative law judge abused his discretion in reducing the number of requested hours in the fee petition. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Lastly, claimant asserts that the administrative law judge erred in following the decision 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 thus rejecting counsel's method of quarter-hour billing. In *Fairley*, the Fifth Circuit stated that, generally, attorneys should charge no more than one-quarter of an hour for preparation of a one-page letter, and one-eighth of an hour for review of a one-page letter. The Fifth Circuit has recently held that its unpublished fee order in *Fairley* is considered circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table). Accordingly, the administrative law judge's reductions in time sought by counsel pursuant to *Fairley* are affirmed.

Accordingly, 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