

BRB Nos. 95-1208
and 95-1208A

WILLIAM J. EUBANKS)	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	DATE ISSUED:
)	
Self-Insured)	
Employer-Respondent)	
Cross-Petitioner)	DECISION and ORDER

Appeals of the Decision and Order and Supplemental Decision and Order Awarding Attorney Fees of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof), Mobile, Alabama, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order and employer appeals the Supplemental Decision and Order Awarding Attorney Fees (94-LHC-7304) 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3). The amount of an attorney's fee award is discretionary and will not be set aside unless shown to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On August 27, 1992, claimant filed a notice of injury and a claim for hearing loss benefits

against employer, for whom claimant last worked on December 21, 1990. In his Decision and Order, the administrative law judge awarded claimant benefits for a 44.04 percent monaural hearing impairment pursuant to 33 U.S.C. §908(c)(13)(A) based on an average weekly wage of \$455.60, with employer entitled to relief from liability for a pre-existing 39.38 percent hearing loss pursuant to Section 8(f), 33 U.S.C. §908(f). The administrative law judge also held employer liable for interest on all awarded compensation determined to be in arrearage as of August 27, 1992, and all medical expenses arising out of or causally related to claimant's hearing loss.

Claimant's counsel thereafter filed a fee application, requesting a total of \$1,442.50, representing 9.25 hours of service at \$150 per hour and .50 hours of service at \$110 per hour. Employer filed objections. In the Supplemental Decision and Order Awarding Attorney Fees, after considering employer's objections, the administrative law judge awarded claimant's counsel a fee of \$1,148.75, representing 8.75 hours of service at \$125 per hour and .50 hours of service at \$110 per hour.

On appeal, claimant contends that interest should accrue as of December 21, 1990, the date of claimant's last covered exposure to injurious noise, and not from when employer obtained knowledge of claimant's injury. Employer responds, urging affirmance of the administrative law judge's decision. Employer appeals the administrative law judge's award of an attorney's fee, incorporating by reference the objections made below into its appellate brief.¹ Claimant, in response, seeks affirmance of the fee award.

We reject claimant's contention that his entitlement to interest accrues from his date of last exposure to noise in 1990. In *Renfroe v. Ingalls Shipbuilding, Inc.*, BRBS , BRB Nos. 91-170/A (June 24, 1996) (*en banc*), the Board held that in a hearing loss case interest accrues from the date benefits become due under Section 14(b), and accrues on all benefits due and unpaid from that date until they are paid. The Board held that the employer cannot wrongfully withhold or delay the payment of benefits until they are "due," and benefits do not become "due" under Section 14(b) until employer has knowledge of the injury, or notice of the injury pursuant to Section 12, 33 U.S.C. §912. *Renfroe*, slip op. at

¹Inasmuch as employer's appeal, BRB No. 95-1208A, was filed on October 30, 1995, the Board considers this date to be controlling for purposes of the one-year period referenced in Public Law No. 104-134.

7, 9. Inasmuch as the instant case is controlled by *Renfro*, and as the parties stipulated that employer received notice of claimant's injury on August 27, 1992, the administrative law judge properly held employer liable for interest on benefits accruing as of that date.²

In its appeal, employer contends that the administrative law judge erred in his assessment of fees as he failed to account for claimant's limited success. Employer contends that claimant was unsuccessful on the only issue that proceeded to a hearing, namely the interest issue. We note that the administrative law judge considered employer's objection in this regard. See Supplemental Decision and Order at 1. Moreover, although claimant lost on the interest issue which proceeded to a hearing, the fee award is not unreasonable in light of the fact that employer paid no compensation or medical benefits voluntarily, and only stipulated at the hearing to claimant's entitlement to benefits for a 44.04 percent monaural impairment and an average weekly wage of \$455.60.³ Thus, the awarded fee of \$1,148.75 is clearly reasonable in light of claimant's gain in compensation. See generally *Farrar v. Hobby*, 506 U.S. 103 (1992); *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT) (5th Cir. 1993).

Employer also contends that the fee award is excessive as this was a routine hearing loss case involving undetailed form pleadings. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, Section 702.132, 20 C.F.R. §702.132, which provides that the award of an attorney's fee shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved, and the amount of benefits awarded. See generally *Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). In the instant case, the administrative law judge specifically considered the regulatory criteria in reducing the requested hours by .5 and counsel's requested hourly rate from \$150 to \$125 for attorney Lattof, and in allowing a \$110 hourly rate for attorney Friend. Moreover, employer has not established that the administrative law judge abused his discretion in setting the number of hours and hourly rates, and his findings are therefore affirmed. See *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. 1995)(table).

Accordingly, the administrative law judge's Decision and Order and Supplemental Decision

²For the reasons stated in *Meadry v. International Paper Co.*, ___ BRBS ___, BRB Nos. 93-1693/A (Sept. 12, 1996), we reject claimant's contention that it must be presumed pursuant to 33 U.S.C. §920(b) that employer had knowledge of claimant's injury as of the date of last exposure on December 21, 1990.

³Claimant's compensation entitlement is \$6,955.42. [(44.04% x 52) x \$303.73].

and Order Awarding Attorney Fees are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge