

BRB No. 95-1215
and 95-1215A

KENNETH C. DOBY)	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
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, 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 Decision and Order and employer appeals the Supplemental Decision and Order Awarding Attorney Fees (94-LHC-0017) 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).¹ We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and 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

¹Inasmuch as employer's appeal, BRB No. 95-1215A, was filed on October 30, 1995, the Board considers this to be the relevant date for both appeals with regard to the one-year period referenced in Public Law No. 104-134.

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).

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 October 27, 1972. In his Decision and Order, the administrative law judge awarded claimant benefits for a 14.2 percent binaural impairment pursuant to 33 U.S.C. §908(c)(13)(B). The administrative law judge also held employer liable for interest on any sums determined to be due and owing as of August 27, 1992, the date of the notice of injury.

Claimant's counsel subsequently submitted a fee petition to the administrative law judge requesting an attorney's fee of \$1,352.50, representing 7 hours of services rendered by lead counsel at \$150 per hour and 2.75 hours of services rendered by associate counsel at \$110 per hour, for work performed before the administrative law judge in connection with this hearing loss claim. Employer filed objections to the fee request. In a Supplemental Decision and Order, the administrative law judge, after considering the objections raised by employer, reduced the number of hours sought by counsel to 9.25, reduced the hourly rate sought to \$125 for claimant's lead counsel, approved the hourly rate of \$110 for claimant's associate counsel, and thereafter awarded claimant's counsel an attorney's fee of \$1,115.

On appeal, claimant contends that interest should accrue as of October 27, 1972, 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 and Order. In its cross-appeal, employer challenges the administrative law judge's fee award, incorporating by reference the objections it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

We first address claimant's contention that his entitlement to interest accrues from his date of last exposure to injurious noise in 1972. 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 on compensation from the date benefits become due under Section 14(b), 33 U.S.C. §914(b), and accrues on all benefits due and unpaid from that date until they are paid. The Board held that an 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 7, 9. Therefore, for the reasons set forth in *Renfroe*, we reject claimant's contention that interest should accrue as of the date of last exposure to injurious noise, and not as of the date that employer obtained knowledge of claimant's injury.² We thus affirm the administrative law judge's determination that employer is liable for interest on benefits accruing as of August 27, 1992, the date of the notice of injury.

²For the reasons stated in *Meardry v. International Paper Co.*, ___ BRBS ___, BRB Nos. 93-1693/A (Sept. 12, 1996), we reject claimant's alternative argument that employer must be presumed to have had knowledge of claimant's injury as of the time of its occurrence on October 27, 1972, under Section 20(b) of the Act, 33 U.S.C. §920(b).

We will now address employer's appeal of the administrative law judge's attorney's fee award. After considering employer's objections to the number of hours and hourly rates awarded by the administrative law judge, we reject these contentions, as it has not shown that the administrative law judge abused his discretion in this regard.³ 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's specific objection to counsel's method of billing in minimum increments of one-quarter hour also is rejected, as the administrative law judge's 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).

Employer further avers that, since claimant obtained only a nominal gain in benefits, the attorney's fee awarded should be limited in accordance with *Hensley v. Eckerhart*, 461 U.S. 424 (1983) and *George Hyman Construction Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161 (CRT) (D.C. Cir. 1992). Initially, we note that, contrary to employer's argument that claimant received only a "nominal" gain in benefits, claimant obtained additional compensation of approximately \$1,130. In considering counsel's fee petition, moreover, the administrative law judge specifically addressed the regulatory criteria governing approval of an attorney's fee under the Act pursuant to 20 C.F.R. §702.132, which provides that the award of any attorney's fee approved 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). The administrative law judge specifically considered employer's objection that the amount sought in counsel's fee petition was excessive in relation to the result achieved by claimant and rationally rejected it. See Supplemental Decision and Order at 1-2. Inasmuch as employer has not demonstrated that the administrative law judge abused his discretion in awarding this attorney's fee, we reject employer's contention that the fee must be further reduced on this basis.⁴ We therefore affirm the administrative law judge's award of an attorney's fee.

³Employer additionally contends that counsel's fee should be reduced since the case was "a routine and uncontested hearing loss claim." We note that the administrative law judge considered the routine nature of the issues involved in reducing claimant's lead counsel's requested hourly rate. Moreover, our review of the record indicates that contrary to employer's assertion that the claim was uncontested, employer controverted the issue of the nature and extent of claimant's disability before the administrative law judge, an issue on which claimant prevailed. We therefore reject employer's contention that the awarded fee must be further reduced on this basis. See 20 C.F.R. §702.132; *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988).

⁴Employer's contentions which were not raised below will not be addressed for the first time on appeal. *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993)(*en banc*)(Brown and McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).

Accordingly, the administrative law judge's Decision and Order and Supplemental Decision and Order Awarding Attorney Fees are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge