



BRB No. 16-0010

BENJAMIN L. CLAUDE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: <u>Nov. 17, 2016</u>
HUNTINGTON INGALLS INDUSTRIES,)	
INCORPORATED)	
)	
Self-Insured)	ORDER on MOTION for
Employer-Respondent)	RECONSIDERATION

Claimant’s counsel has filed a timely motion for reconsideration of the Board’s July 5, 2016 Decision and Order in the captioned case, *Claude v. Huntington Ingalls Industries, Inc.*, BRB No. 16-0010 (July 5, 2016) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. We deny the motion and affirm the Board’s decision.

In his motion for reconsideration, counsel contends that the Board’s affirmance of the administrative law judge’s disallowing him to file a brief in reply to employer’s objections to counsel’s fee petition deprived him of due process. Due process requires that a party be given notice of the proceedings and opportunity to be heard at a reasonable time and in a reasonable manner. *Goldberg v. Kelly*, 397 U.S. 254 (1970). In this case, as the Board noted in its decision, the administrative law judge explicitly set out the briefing schedule for any filings relating to a petition for an attorney’s fee. *See* 20 C.F.R. §702.132(a).¹ Specifically, the administrative law judge stated:

¹ Section 702.132(a) states, in relevant part:

The application shall be filed and serviced upon the other parties within the time limits specified by such district director, administrative law judge, Board, or court. The application shall be supported by a complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing such work, the normal billing rate for each such person, and the hours devoted by each such person to each category of work.

6. Counsel for Claimant may, not later than 30 days after the date of this Order, submit a fully-supported application for attorney's fees and costs; and
7. The Employer may, not later than 21 days after receipt of any fee petition, file objections thereto. **No reply brief will be authorized or entertained.**

Decision and Order Awarding Benefits at 10 (emphasis added). Thus, the administrative law judge provided counsel with notice that he may file an attorney's fee petition, that his application for attorney's fees and costs must be "fully-supported," and that "[n]o reply brief will be authorized or entertained." *Id.*; see *Claude*, slip op. n. 2 at 3. Additionally, as evidenced by counsel's submission of his fee petition and the accompanying ten-page brief in support of that petition, counsel was provided with an adequate opportunity to be heard on the attorney's fee issue. Therefore, the administrative law judge's refusal to accept counsel's reply brief did not violate his due process rights.

Moreover, as the Board accurately noted, there are no regulations giving counsel the right to respond to employer's objections to the fee petition, *Claude*, slip op. at 3, or prohibiting the administrative law judge from his course of action in this case, i.e., stating, up-front, that no reply brief would be "authorized or entertained," and rejecting counsel's reply brief on that ground. While the Board allows the filing of reply briefs in response to an employer's objections to a fee petition submitted for work performed before the Board, see, e.g., *Beckworth v. Horizon Lines, Inc.*, 43 BRBS 156, 157 (2009), that does not mandate that an administrative law judge also must accept such filings. None of the cases cited by counsel in support of his motion for reconsideration involved the specific scenario in this case, where the administrative law judge informed counsel beforehand that "[n]o reply brief will be authorized or entertained." Decision and Order Awarding Benefits at 10. Consequently, the Board correctly found that counsel failed to establish that the administrative law judge's refusal to consider counsel's reply brief constituted an abuse of his discretion. We, therefore, deny claimant's motion for reconsideration.

Accordingly, we deny claimant's motion for reconsideration. 20 C.F.R. §802.409.
The Board's decision is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge