

K.C.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NORTHROP GRUMMAN SHIP SYSTEMS, INCORPORATED)	DATE ISSUED: 03/17/2009 <u>2009</u>
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	

ORDER

Claimant has filed a timely motion for reconsideration of the Board's November 21, 2008, Order dismissing claimant's appeal in the captioned case. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer responds that claimant's motion should be denied.

Claimant contends that the Board erred in declining to address his appeal of the district director's memoranda of informal conference on the ground that such are not appealable orders pursuant to Section 21(b)(3) of the Act, 33 U.S.C. §921(b)(3). Claimant contends that the memoranda of informal conference are determinative of employer's liability for an attorney's fee pursuant to Section 28(b), 33 U.S.C. §928(b), such that the Board should entertain the appeal. Claimant notes that the recommendation of the district director cannot be changed by an administrative law judge; thus, referral for a formal hearing cannot provide a remedy.

We deny claimant's motion for reconsideration. That claimant is in a "Catch-22" situation with regard to attorney's fee liability due to the unfavorable recommendation of the district director, *see Wilson v. Virginia Int'l Terminals*, 40 BRBS 46 (2000), is not a sufficient basis for the Board to accept this appeal. The district director's memoranda of informal conference are neither final actions nor appealable interlocutory orders over

which the Board has jurisdiction. *See Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir.), *cert. denied*, 531 U.S. 956 (2000); *Maria v. Del Monte/Southern Stevedore*, 22 BRBS 132 (1989) (*en banc*), *vacating on reconsideration* 21 BRBS 16 (1988) (associate director's letter notifying claimant that the Special Fund was suspending benefits while it recouped a credit is not a final appealable order). The memoranda of informal conference are based on informal discussions with, and presentation of documents to, the district director; they are not based on any proceeding under the Administrative Procedure Act or on any statutory or regulatory provisions that give final decision-making authority to the Secretary of Labor. *See, e.g.*, 33 U.S.C. §§907(d)(2), 919(d), 939. Therefore, the Board properly dismissed claimant's appeal.

Accordingly, claimant's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's Order dismissing claimant's appeal is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge