

BRB Nos. 04-0793  
and 04-0793 A  
Case No. 03-LHC-2102

EDWARD ST. AMANT	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: October 20, 2004
Cross-Respondent	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	
	)	
Employer-Respondent	)	
Cross-Petitioner	)	ORDER

On August 9, 2004, the Board received claimant's motion requesting to remand BRB No. 04-0793, to the Office of the Administrative Law Judges for modification proceedings. The Board hereby grants claimant's motion, dismisses the appeal in BRB No. 04-0793, and remands the case to the administrative law judge for modification proceedings.

If the administrative law judge denies modification, the case may be reinstated on the Board's docket. The Board will reinstate the case only if the petitioner requests reinstatement. The request for reinstatement must be filed with the Board within thirty (30) days from the date the Order on modification is filed and must be identified by BRB No. 04-0793. If reinstatement is requested, the Board will reconsider only the issues raised in claimant's appeal of the Decision and Order filed June 9, 2004.

In the event the administrative law judge denies modification and claimant wishes the Board to consider not only the original appeal, but also whether the administrative law judge erred in denying modification, a Notice of Appeal of the Order denying modification must also be filed with the request for reinstatement. The Notice of Appeal must also be filed with the Board within thirty (30) days of the date the Order on modification will be filed. 20 C.F.R. § 802.205. The appeal of the Order on modification will be assigned a new BRB number and will be consolidated with BRB No. 04-0793.

In the event the administrative law judge grants modification, any party who is aggrieved by the Order granting modification may file an appeal with the Board within thirty (30) days of the date the Order granting modification is filed.

Employer's appeal in BRB No. 04-0793 A, remains pending before the Board. The Board has received employer's Petition for Review and brief, which is accepted as part of the record. 20 C.F.R. § 802.211.

A response brief may be filed within thirty (30) days from receipt of this Order. 20

C.F.R. § 802.212.

The Board is also in receipt of claimant's counsel complete, itemized statement requesting fee for services performed in this appeal pursuant to 20 C.F.R. § 802.203. Counsel requests a fee of \$3,500.00 for 14 hours of legal services at an hourly rate of \$250.00, and \$280.00 for 4 hours of legal services at an hourly rate of \$70.00 for a total of \$3,780.00. No objections to the fee petition have been received.

In order to be entitled to a fee, claimant's counsel must engage in a successful prosecution of the claim. 33 U.S.C. § 928(a). In this case, claimant appealed the administrative law judge's dismissal of his case to the Board. Claimant has now requested that this appeal be dismissed and the case remanded to the administrative law judge. Therefore, as claimant has failed to successfully prosecute his case before the Board, the request for attorney fees is denied.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge