



## BRIEFS, IN GENERAL

**OPENING BRIEFS** should clearly identify error(s) and discuss supporting evidence and law.

- *For fee petitions, this means providing market evidence in your initial petition.*

**RESPONSES** should address arguments raised in the opening brief as opposed to generally asserting no error.

- *For fee petition responses, providing your own market evidence can bolster your argument for a lower hourly rate.*

**REPLIES** should address the arguments raised in the response, not just restate the arguments from the opening brief.

**MOTIONS FOR RECONSIDERATION** should explain how the Board erred, rather than simply restating the already-rejected arguments.

**UNREPRESENTED PARTIES** may, but are not required to, submit briefs.

### APPEALS OF BENEFITS CLAIMS

**IDENTIFY** specific findings or conclusions by the administrative law judge and explain why they were not rational, supported by substantial evidence, or in accordance with law.

**CITE** specific evidence in the record, including exhibit and page numbers, not just broad conclusions or general references to summaries previously set forth in the brief.

**DISCUSS** relevant Board or circuit case law, either in-circuit or out, and how it supports your allegations of error.

*\*\*This document suggests best practices for those who appear before the Board; therefore, it is provided for informational purposes only and does not constitute the official rules of the Board.*

### APPEALS OF ATTORNEY FEE DECISIONS

**IDENTIFY** specific findings or conclusions by the district director or ALJ and explain why they were arbitrary, capricious, based on an abuse of discretion, or not in accordance with law.

**CITE** specific evidence in the record, including exhibit and page numbers, supporting (or undermining) the requested fee.

**DISCUSS** relevant Board or circuit case law, either in-circuit or out, and explain how it supports your allegations of error (e.g., successful prosecution and partial success).

**PROCEDURE IS IMPORTANT:** if entitlement to a fee is at-issue, clearly set forth the relevant procedural history and explain why the claim did (or did not) satisfy the criteria at 33 U.S.C. §928.



## OTHER BRIEFING STRATEGIES

- **Quickly and concisely identify the issues on appeal and focus on them.**
- **Address only relevant facts, findings, and evidence.**
  - Lengthy recitations of all the evidence and ALJ findings are often unnecessary and can distract from the evidence and arguments relevant to the appeal, but...
  - Providing sufficient background information to put the case into its proper context can be both relevant and an effective way to tell your client's side of the story.
- **Be Mindful of Tone.** Ad hominem attacks generally distract from the merits of your argument.
- **Pay Attention to Details.** Mischaracterizing evidence or ALJ findings can undermine your appeal (e.g., saying the ALJ "ignored" an issue when they actually rendered a finding on it).
- **Copying-and-Pasting.** If copying-and-pasting from a brief submitted to the ALJ, review it carefully and revise as necessary to ensure it is relevant to the appeal and sufficiently identifies error in the ALJ's decision (e.g., a credibility argument to the ALJ is different than an argument to the Board about how the ALJ erred in making their credibility determination).
- **Harmless Error.** If the ALJ rendered multiple potentially-dispositive findings on an issue, explain how the error you identified made a difference.

## CONSULT THE LAW AND APPLICABLE REGULATIONS

The U.S. Department of Labor's Benefits Review Board is authorized to review appeals of decisions under the **Black Lung Benefits Act, 30 U.S.C. §§901-945**, the **Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§901-950**; and extensions of the Longshore and Harbor Workers' Compensation Act (the **Defense Base Act, 42 U.S.C. §§1651-1655**, the **Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §§8171-8173**, the **Outer Continental Shelf Lands Act, 43 U.S.C. §§1331-1356c**, and the **War Hazards Compensation Act, 42 U.S.C. §§1701-1717**).

The **Benefits Review Board's Rules of Practice and Procedure, 20 C.F.R. §§802.101-802.411**, govern the operation of the Board.

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