

BRB No. 94-3940 BLA
CASE No. 93-BLA-0160

JAMES W. SHELTON)
)
 Claimant-Petitioner)
)
 v.)
)
 CLAUDE V. KEEN TRUCKING COMPANY) DATE ISSUED:
)
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) ORDER

By Order dated December 6, 1994, the Board acknowledged the receipt of claimant's Notice of Appeal and directed claimant's lay representative to file a petition for review and brief in the captioned case. By letter dated December 20, 1994, Tim White of Stone Mountain Health Services requested that the Board consider claimant to be representing himself and that this appeal be reviewed accordingly. Although Mr. White uses the term "lay representative," we construe his statements to indicate that he will not be acting as a *bona fide* lay representative, as is authorized to provide counsel to claimants under the Act, see 20 C.F.R. §§725.363(b), 725.364, 725.365, 725.366, and which are required to adequately brief issues raised before the Board, see *Burkholder v. Director, OWCP*, 8 BLR 1-58 (1985); 20 C.F.R. §802.211(a), (b), (d), and who may seek fees for services rendered, see 20 C.F.R. §§725.365, 725.366; but see *Harrison v. Liberty Mutual Insurance Co.*, 3 BLR 1-596 (1981) (holding that, under 20 C.F.R. §725.365 and 725.367, the fees approved for the lay representative by the adjudication officer cannot be assessed against an employer, the Trust Fund or made a lien against claimant's benefits, but must be billed directly to claimant). We thus conclude that Mr. White is merely assisting claimant in filing his *pro se* appeal and is neither rendering professional services nor expecting to apply for compensation under the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act), for any assistance provided claimant in pursuing this appeal. We will therefore consider claimant to be representing himself in this appeal, see 20 C.F.R. §§802.211(e), 802.220; *cf.* 20 C.F.R. §802.202(d)(2), (e)(2) (addressing requirements for proper briefing of petitioner's appeal before the Board).¹

¹ We note that communications by Stone Mountain Health

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. see *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-37 (1986). We therefore modify the Board's order of December 6, 1994, to delete the requirement that Mr. White file a petition for review and brief on behalf of claimant, and, in view of claimant's *pro se* status, we hold that no further action is required of claimant to perfect this appeal, see 20 C.F.R. §§802.211(e), 802.220.

In its response brief, employer urges that claimant's appeal was not timely filed, see 20 C.F.R. §§725.479, 725.481, 802.205, 802.207. We reject this contention, as there is no evidence in the record indicating that the appeal from the administrative law judge's decision and order in this case was not timely filed, see 20 C.F.R. §802.207.

Services personnel to the Clerk of the Board indicate that other Stone Mountain Health Services employees are also assisting claimants without counsel in filing their appeals before the Board. We also note that the acknowledgment orders to be issued henceforth by the Clerk of the Board in such cases will reflect the *pro se* nature of those appeals, consistent with the reasoning set forth in this order.

In view of our modification of the Board's acknowledgement order of December 6, 1994, we grant employer thirty (30) days from the date of receipt of this order in which to file a supplemental brief, see 20 C.F.R. §802.215; see also 20 C.F.R. §802.212. During this period, the Director, Office of Workers' Compensation Programs, may also file a brief, if she chooses to do so, see 20 C.F.R. §802.215; see also 20 C.F.R. §802.212.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge