BRB No. 04-0936

DWAYNE C. LUNDY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORTHROP GRUMMAN SHIP SYSTEMS	)	DATE ISSUED: 03/03/2006
	)	
Self-Insured	)	ORDER ON MOTION FOR
Employer-Respondent	)	RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board's decision in this case, *Lundy v. Northrop Grumman Ship Systems*, BRB No. 04-0936 (Sept. 15, 2005) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer responds, urging that claimant's motion be denied. Claimant replies to employer's response brief. For the following reasons, we deny the request for reconsideration.[1]

In its decision addressing claimant's appeal, the Board affirmed the administrative law judge's calculation of claimant's average weekly wage pursuant to Section 10(a), 33 U.S.C. §910(a), of the Act. Specifically, the Board rejected claimant's position that the decision in *Wooley v. Ingalls Shipbuilding, Inc.*, 33 BRBS 88 (1999), *aff'd*, 204 F.3d 616, 34 BRBS 12(CRT) (5th Cir. 2000), mandated that the number of days on which claimant did not work but for which

[1] On October 25, 2005, employer filed a Motion to Strike the Claimant's Brief supporting reconsideration. Employer argues that claimant's brief in support of his motion was improper and filed untimely as it was dated October 14, 2005, and thus filed after claimant's motion for reconsideration dated October 4 and employer's response filed October 10. In response, claimant has filed a Motion Seeking Admittance of Post-Decision Pleadings, asserting that due to the interruptions resulting from Hurricane Katrina more than the usual number of post-decision pleadings have been submitted and requesting that the brief in support of reconsideration which he submitted on October 14, 2005, be incorporated by reference. Employer's motion to strike is denied, claimant's motion to accept his supporting brief is granted, and all pleadings are admitted as part of the record.

he received paid vacation or holiday leave in the year prior to his work injury should not be included in the calculation of his average daily wage. Rather, the Board determined that the court's decision in *Wooley* supports the administrative law judge's determination that the vacation and holiday days when claimant did not report for work counted as "days worked" since claimant received wages for actual days off from work.

Claimant's arguments in support of his motion for reconsideration do not establish any error committed by the Board in its decision in this case. Claimant essentially repeats the arguments he made in his initial appeal, asserting that the administrative law judge erred in including vacation and holiday days for which claimant received pay but on which he was not physically at work as "days actually worked" in calculating claimant's average daily wage.[2] In its decision, the Board considered these contentions in light of the relevant caselaw and rejected claimant's position. We therefore reject claimant's motion, and we affirm the administrative law judge's calculation of claimant's average weekly wage.

Accordingly, claimant's motion for reconsideration is denied. 20 C.F.R. §802.409.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

[2] Claimant posits that under the administrative law judge's calculation if an employee worked the "perfect year," *i.e.*, 5 days a week for each of the 52 weeks in a year, or 260 days, the addition of paid holidays could result in a divisor exceeding the 260 days available to a 5-day per week worker. The instant case does not present these facts. Moreover under *Wooley*, in order to be included as a "day worked," vacation days and holidays must be in lieu of an actual work day.