

whether the views of the parties on the content of the report should be obtained in writing and, where necessary, shall fix by order the time for the submission of those views. A decision of the full Board disposing of the proceeding without a remand or, where the Board has expressly retained jurisdiction, following completion of the remand shall be the final decision of the Board and subject to judicial review.

(g) In conducting its examination of the initial decision, the Board may review the record as though it were making the initial decision itself. As a general matter, however, the Board will not overturn a finding of fact contained in the initial decision unless that finding is unsupported by substantial evidence in the record viewed as a whole. In determining whether some action other than affirmance of the initial decision is required, the Board will also consider whether:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed;

(2) The initial decision is based on an erroneous interpretation of statute or regulation;

(3) The initial decision is arbitrary, capricious or an abuse of discretion, or otherwise not consistent with law;

(4) The initial decision is not made consistent with required procedures and results in harmful error.

(h) Initial decisions that become final without review by the full Board shall not be binding precedent in any other case.

§28.88 Board procedures; enforcement.

(a) A person required to take any action under the terms of a Board decision or order shall carry out its terms promptly, and shall, within 30 days after the decision or order becomes final, provide the Board and all parties to the proceeding with a compliance report specifying:

(1) The manner in which compliance with the provisions of the decision or order has been accomplished;

(2) The reasons why compliance with any provisions of the Board's order has not been fully accomplished; and

(3) The steps being taken to ensure full compliance.

(b) When the Board does not receive a notice of compliance in accordance with paragraph (a) of this section, the Solicitor shall make inquiries to determine the status of the compliance report. When the Solicitor establishes that a complete compliance report is not forthcoming, the Solicitor shall report the failure to file a complete compliance report to the Board.

(c) Any person and/or the General Counsel may petition the Board for enforcement of a final decision of the Board. The petition shall specifically set forth the reasons why the petitioner believes there is non-compliance.

(d) Upon receipt of a non-compliance report from its Solicitor or of a petition for enforcement of a final decision, the Board may issue a notice to any person to show cause why there was non-compliance. Following a show cause proceeding, the Board may seek judicial enforcement of its decision or order.

§28.89 Attorney's fees and costs.

Within 20 days after service of a final decision by the Board, or within 20 days after the date on which an initial decision becomes final pursuant to §28.87(d), the petitioner, if he or she is the prevailing party, may submit to the administrative judge who heard the case initially a request for the award of reasonable attorney fees and costs. GAO may file a response within 20 days after service of the request. Motions for attorney fees shall be filed in accordance with §28.21 of these regulations. Rulings on attorney's fees and costs shall be consistent with the standards set forth at 5 U.S.C. 7701(g). The decision of the administrative judge concerning attorney's fees and costs shall be subject to review and shall become final according to the provisions of §§28.86-28.87.

§28.90 Board procedures; judicial review.

(a) A final decision by the Board under 31 U.S.C. 753(a) (1), (2), (3), (6), (7) or (9) may be appealed to the United States Court of Appeals for the Federal