In the Matter of:

SYED M. A. HASAN,	**ARB CASE NO. 05-099**
COMPLAINANT,	**ALJ CASE NO. 2002-ERA-032**
v.	**DATE: August 31, 2007**

SARGENT & LUNDY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Syed M. A. Hasan, *pro se*, Madison, Alabama

For the Respondent:
Harry Sangerman, Esq., *Sangerman & Gilfillan*, Chicago, Illinois

FINAL DECISION AND ORDER

Syed M. A. Hasan filed a complaint alleging that Sargent & Lundy (S & L) violated the whistleblower protection provision of the Energy Reorganization Act (ERA). The ERA protects employees who engage in certain activity from retaliation.[1] A U.S. Department of

[1] 42 U.S.C.A. § 5851(a) (West 2007). This statute has been amended since Hasan filed his complaint, but the amendments are not applicable to this case because Hasan's complaint was filed before the amendments' effective date, August 8, 2005. Energy Policy Act of 2005, Pub. L. 109-58, Title VI, § 629, 119 Stat. 785 (Aug. 8, 2005). The Act also protects applicants. *Samodurov v. Gen. Physics Corp.*, No. 1989-ERA-20, slip op. at 3 (Sec'y Nov. 16, 1993). Hasan has filed many ERA complaints. *See e.g., Hasan v. Sargent & Lundy*, ARB No. 03-030, ALJ No. 2000-ERA-007 (ARB July 30, 2004), *aff'd sub nom., Hasan v. U.S. Dep't of Labor*, 400 F.3d 1001 (7th Cir. 2005); *Hasan v. Stone & Webster Engineers & Constructors, Inc.*, ARB No. 03-058, ALJ No. 2000-ERA-010 (ARB June 27, 2003), *aff'd sub nom., Hasan v. Sec'y of Labor*, No. 03-1981, 2004 WL 574520 (1st Cir. Mar. 24, 2004); *Hasan v. J.A. Jones, Inc.*, ARB No. 02-121, ALJ No. 2002-ERA-018 (ARB June 25, 2003), *aff'd sub nom., Hasan v. U.S. Dep't of Labor*, No. 03-1852, 2004 WL 1539635 (4th Cir. July 9, 2004); *Hasan v. J.A. Jones, Inc.*, ARB No. 02-123, ALJ No. 2002-ERA-005 (ARB June 25, 2003), *aff'd sub nom., Hasan v. U.S. Dep't of Labor*, No.

Labor Administrative Law Judge (ALJ) recommended that we dismiss Hasan's complaint because he concluded that the doctrine of collateral estoppel precludes Hasan from bringing this complaint. We, too, conclude that collateral estoppel applies and therefore dismiss Hasan's complaint.

BACKGROUND

S & L is an engineering firm that performs contract work in the nuclear power industry. Hasan applied for an engineer position with S & L in 1998 and 1999. S & L did not hire him for the engineer position and decided never to hire him for any position. Hasan filed a complaint alleging that S & L did not hire him and would never hire him because he had engaged in activity that the ERA protects. Therefore, Hasan claimed that S & L violated the ERA. This complaint initiated *Hasan I*.[2]

After a hearing on the merits, a United States Department of Labor Administrative Law Judge (ALJ) found that Hasan did not prove a necessary element of his case, that is, that he was qualified for the engineer position. The ALJ also found that S & L legitimately refused to hire Hasan for any position.[3] Therefore, he recommended that Hasan's complaint be dismissed. Hasan appealed to the Administrative Review Board (Board). The Board agreed with the ALJ's findings and dismissed the complaint.[4] The Seventh Circuit denied Hasan's Petition for Review[5] and thereafter denied Hasan's request for a rehearing and rehearing en banc.

03-15469, 2004 WL 1121580 (11th Cir. May 11, 2004); *Hasan v. Florida Power & Light Co.*, ARB No. 01-004, ALJ No. 2000-ERA-012 (ARB May 17, 2001), *aff'd sub nom., Hasan v. U.S. Dep't of Labor,* No. 01-12953, 2002 WL 833328 (11th Cir. Apr. 11, 2002); *Hasan v. Wolfe Creek Nuclear Operating Corp.*, ARB No. 01-006, ALJ No. 2000-ERA-014 (ARB May 31, 2001), *aff'd sub nom., Hasan v. U.S. Dep't of Labor*, 298 F.3d 914 (10th Cir. 2002); *Hasan v. Commonwealth Edison Co.*, ARB Nos. 01-002, 01-003, 01-005, ALJ Nos. 2000-ERA-008, 011, 013 (ARB Apr. 23, 2001), *aff'd sub nom., Hasan v. U.S. Dep't of Labor*, No. 01-1130, 2002 WL 448410 (7th Cir. Mar. 19, 2002); *Hasan v. Burns & Roe Enters., Inc.*, ARB No. 00-080, ALJ No. 2000-ERA-006 (ARB Jan. 30, 2001), *aff'd sub nom., Hasan* v. *U.S. Sec'y of Labor*, No. 01-1322, 2004 WL 1055257 (3d Cir. Apr. 23, 2004); *Hasan v. Intergraph Corp.*, ARB Nos. 97-016, 97-051, ALJ Nos. 1996-ERA-017, 027 (ARB Aug. 6, 1997), *aff'd sub nom., Hasan v. Director*, 190 F.3d 544 (11th Cir. 1999); *Hasan v. Commonwealth Edison Co.*, ARB No. 00-028, ALJ No. 2000-ERA-001 (ARB Dec. 29, 2000), *aff'd sub nom., Hasan v. U.S. Dep't of Labor,* No. 01-1131, 2002 WL 448410 (7th Cir. Mar. 19, 2002); *Hasan v. Commonwealth Edison Co.*, ARB No. 00-043, ALJ No. 1999-ERA-017 (ARB Dec. 29, 2000), *aff'd sub nom., Hasan v. U.S. Dep't of Labor,* No. 01-2177, 2002 WL 448410 (7th Cir. Mar. 19, 2002).

[2] *Hasan v. Sargent & Lundy*, 2000-ERA-007, slip op. at 3 (ALJ Dec. 5, 2002) (*Hasan I*).

[3] *Id.*, slip op. at 13.

[4] *Hasan v. Sargent & Lundy,* ARB No. 03-030, ALJ No. 2000-ERA-007 (ARB July 30, 2004) (*Hasan I).*

[5] *Hasan v. U.S. Dep't of Labor*, 400 F.3d 1001 (7th Cir. 2005).

During the pendency of *Hasan I*, Hasan sent another job application to S & L. S & L refused to hire him. Hasan then filed the instant ERA complaint, *Hasan II*, alleging that the company refused to hire him because he had engaged in ERA-protected activity. The Labor Department's Occupational Safety and Health Administration (OSHA) investigated this complaint and found that it had no merit. Hasan then requested a hearing before an ALJ. *Hasan II* was assigned to a different ALJ.

The ALJ issued a prehearing order, and shortly thereafter S & L submitted a motion to dismiss, or, in the alternative, to place the case in abeyance pending the resolution of *Hasan I*. S & L argued, among other things, that Hasan was collaterally estopped from relitigating *Hasan I*. Hasan replied and requested discovery. The ALJ held this matter, *Hasan II*, in abeyance until *Hasan I* was resolved.

After the Board affirmed *Hasan I*, the ALJ issued a show cause order as to why *Hasan II* should not be dismissed because of collateral estoppel. Hasan replied to the merits of the show cause order and also asked the ALJ to wait until a ruling on the Petition for Review in the Seventh Circuit in *Hasan I* was issued. On May 6, 2005, after waiting until the Seventh Circuit ruled on Hasan's requests, the ALJ recommended that this case, *Hasan II*, be dismissed because of collateral estoppel.[6] Hasan appealed.

JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to review the ALJ's recommended decision pursuant to 29 C.F.R. § 24.8 (2007) and Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the Board the Secretary's authority to review cases under the statutes listed in 29 C.F.R. § 24.1(a), among which is the ERA).

Under the Administrative Procedure Act, the Board, as the Secretary's designee, acts with all the powers the Secretary would possess in rendering a decision under the whistleblower statutes.[7] In ERA cases, the Board engages in de novo review of the ALJ's recommended decision.[8]

Likewise, the Board reviews an ALJ's recommended grant of summary decision de novo, i.e., the same standard that the ALJ applies in initially evaluating a motion for summary judgment governs our review.[9] The standard for granting summary decision is essentially the same as the one used in FED. R. CIV. P. 56, the rule governing summary

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[6] May 6, 2005 Recommended Decision and Order Granting Respondent's Motion to Dismiss (R. D. & O.).

[7] *See* 5 U.S.C.A. § 557(b) (West 2007).

[8] *See Kester v. Carolina Power & Light Co.*, ARB No. 02-007, ALJ No. 2000-ERA-031, slip op. at 4 (ARB Sept. 30, 2003).

[9] *Honardoost v. Peco Energy Co.*, ARB No. 01-030, ALJ No. 2000-ERA-036, slip op. at 4 (ARB Mar. 25, 2003).

judgment in the federal courts.[10] Thus, pursuant to 29 C.F.R. § 18.40(d), the ALJ may issue summary decision "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." A "material fact" is one the existence of which affects the outcome of the case.[11] And a "genuine issue" exists when the nonmoving party produces sufficient evidence of a material fact that a factfinder is required to resolve the parties' differing versions at trial. Sufficient evidence is any significant probative evidence.[12]

DISCUSSION

Sargent & Lundy's Motion to Strike Hasan's Brief

As a preliminary matter, we take up Sargent & Lundy's Motion to Strike Hasan's Brief. Hasan's Initial Brief is replete with abusive characterizations and personal attacks on various judicial tribunals. Hasan opens his Brief with a general insult aimed at the Department of Labor.[13] Throughout his pleadings, Hasan casts unfounded, disparaging characterizations at the Board, the Seventh Circuit,[14] and the ALJs presiding over his earlier litigation.[15] Hasan also makes personal attacks on both the Board's General Counsel and opposing counsel.[16]

Hasan has been warned several times about abusive language in his briefs. In *Hasan v. Commonwealth Edison*, Commonwealth Edison moved to strike Hasan's pleadings "because they are infected with abusive and impertinent attacks that have no place in settings before this Tribunal." Because Hasan was pro se, the Board did not strike his brief. But we warned:

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[10] *Hasan v. Burns & Roe Enters., Inc*., ARB No. 00-080, ALJ No. 2000-ERA-006, slip op. at 6 (ARB Jan. 30, 2001).

[11] *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986).

[12] *Id.* at 248-49, citing *First Nat'l Bank of Ariz. v. Cities Serv. Co*., 391 U.S. 253, 288-290 (1968).

[13] "If President Bush appoints an honest and impartial Tribunal to investigate the various United States Government agencies, the U.S. Department of Labor (DOL) will top the list as the most EVIL, the most DISHONEST and the most CORRUPT U.S. GOVERNMENT AGENCY." Brief at 1.

[14] Elsewhere he refers to the judges on the Seventh Circuit as puppets of Judge Posner. Brief at 4, 5.

[15] Brief at 6.

[16] "The General Counsel of the ARB . . . working for the ARB since 1999, is another BIASED DOL OFFICIAL . . . . [She is] an agent of Big and rich Corporations of this Country . . . ." Brief at 3.

> If Hasan's briefs in these cases had been filed by an attorney, we would not hesitate to strike them as inconsistent with a lawyer's ethical obligations. However, because Hasan is a *pro se* litigant and is not a lawyer, we allow him considerably more leeway, and therefore decline to grant ComEd's motion to strike his briefs in these cases. We agree with ComEd, however, that it is reasonable for a court to demand that all litigants – including *pro se* litigants – comport themselves with a measure of civility and respect for the tribunals that hear their cases. Among *pro se* litigants, this proposition applies particularly to litigants such as Hasan, who has significant litigation experience. Not only is vituperative behavior by a litigant unwarranted and inappropriate, it ultimately is self-defeating because it detracts from a complainant's ability to make a sound legal argument in support of his case.[17]

But even after this stern warning, Hasan filed an "Emergency Motion" herein which continued his invective-filled tirades.[18] Nevertheless, we gave Hasan another chance to conform. We wrote:

> As an initial matter, we consider Sargent & Lundy's request that we strike Hasan's motion because the Emergency Motion is "another in [a] series of pleadings filed by Hasan that defames opposing counsel, the various judges that have been assigned his cases, the federal agencies with responsibility for ERA matters and even the U.S. Congress." Respondent's Opposition to and Request to Strike Emergency Motion to Vacate [the ALJ's] Order at 3.
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> Hasan has once again filed a pleading with the Board that is replete with offensive personal attacks upon the integrity and competency of the Department of Labor's administrative law judges, among others. The Board has admonished Hasan previously . . . . Hasan has chosen to ignore the Board's instruction. *Accordingly, in light of Hasan's pro se status, we will give Hasan just one more opportunity to adhere to the standards of civility and respect that the Board requires of those who litigate before it.* We will hold Sargent & Lundy's Motion to Strike Hasan's Emergency Motion in abeyance for the time being. However, Hasan is hereby put on notice that if

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[17] *Hasan v. Commonwealth Edison Co.*, ARB Nos. 01-002, 01-003, ALJ Nos. 2000-ERA-008, 2000-ERA-011, slip op. at 4 (ARB Apr. 23, 2001).

[18] For example, Hasan writes, "Sangerman is Guilty of subornation of Perjury . . . . [I]t is abundantly clear that Sangerman (respondent's attorney) is a BIG FRAUD, an incorrigible LIAR and a Dishonest attorney." January 14, 2003 Emergency Motion at 14.

> he persists in filing pleadings in this case (or in any other case before the Board) that contain such vitriolic personal attacks, we will strike any such pleading and, if appropriate, dismiss the complaint in support of which the pleading was filed.[19]

S & L argues not only that we should strike Hasan's Brief but also that we should dismiss his complaint.[20] The company cites *Somerson v. Mail Contractors of America* for the proposition that the Board has the ability to fashion sanctions for abusive conduct and therefore should dismiss Hasan's complaint. In *Somerson*, the ALJ found that the complainant, Somerson, "willfully and intentionally violated court orders, abused personnel during telephone calls, and finally, so disrupted the conduct of the formal hearing that it had to be terminated."[21] We accepted the ALJ's findings and characterized Somerson's behavior as "blatantly contumacious, egregious misconduct."[22] The ALJ dismissed Somerson's complaint and we affirmed. We held that Department of Labor ALJs have inherent power to achieve the orderly and expeditious disposition of cases. Therefore, they may impose sanctions, including the severe sanction of dismissal, so long as they exercise that authority with restraint and discretion.[23] We, too, have authority to effectively manage our affairs, including authority to issue sanctions, including dismissal, for a party's continued failure to comply with Board orders and briefing requirements.[24]

We find that Hasan's conduct in submitting the abusive and insulting brief does not, yet, constitute blatantly contumacious and egregious misconduct conduct warranting dismissal. But we will not excuse abusive and vituperative pleadings. Therefore, since we have warned Hasan that we will strike such pleadings, and since we find that further warnings will likely have no effect, we **GRANT** S & L's Motion to Strike Hasan's Initial Brief.

Collateral Estoppel Precludes Hasan's Claim

Legal Standard for Collateral Estoppel

As noted earlier, the ALJ concluded that the allegations of *Hasan II* were subject to collateral estoppel.[25] Collateral estoppel, or "issue preclusion," is a concept included within

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19 *Hasan v. Sargent & Lundy*, ARB No. 03-078, ALJ No. 2002-ERA-032 (ARB Mar. 28, 2003) (Holding Motion to Strike Motion in Abeyance and Show Cause) (emphasis added).

20 Brief at 2.

21 *Somerson v. Mail Contractors of Amer.*, ARB No. 03-055, ALJ No. 2002-STA-044, slip op. at 6 (ARB Nov. 25, 2003).

22 *Id.* at 10.

23 *Id.* at 8.

24 *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-035, ALJ No. 2003-AIR-012, slip op. at 3 (ARB Sept. 28, 2004).

25 R. D. & O. at 5.

the doctrine of res judicata, which "refers to the effect of a judgment in foreclosing a relitigation of a matter that has been litigated and decided."[26] Collateral estoppel applies in administrative adjudication.[27]

Our jurisprudence holds that collateral estoppel applies when: 1) the same issue has been actually litigated and submitted for adjudication; 2) the issue was necessary to the outcome of the first case; and 3) precluding litigation of the contested second matter does not constitute a basic unfairness to the party sought to be bound by the first determination.[28]

Collateral Estoppel Applies Here

As we previously discussed, Hasan alleged, in both *Hasan I* and *II*, that S & L discriminated against him when it refused to hire him. Thus, the issue in both cases is whether S & L violated the ERA when it refused to hire Hasan. Hasan appears to argue that because he applied for the job at issue here after the *Hasan I* hearing, he was therefore applying for a different job than before.[29] We read this as arguing that *Hasan I* and *Hasan II* are litigating different issues. But the record shows that, in both cases, Hasan was applying for engineering jobs. Besides, *Hasan I* held that S & L legitimately refused to hire Hasan for any position. Thus, the issues are identical or, at worst, substantially the same.[30] Furthermore, the issue litigated and decided in *Hasan I* decided the outcome of that case. Moreover, because the issue was fully and fairly litigated in a hearing before a U.S. Department of Labor ALJ in *Hasan I*, precluding Hasan from litigating the issue again would not be unfair.[31] Therefore, we conclude that collateral estoppel precludes Hasan's whistleblower complaint.

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[26] *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984) (distinguishing issue preclusion and claim preclusion).

[27] *See Univ. of Tenn. v. Elliot*, 478 U.S. 788, 797-799 (1986) (reasoning that when an administrative agency acts in a judicial capacity to resolve issues of fact which the parties before it have had an adequate opportunity to litigate, application of res judicata principles is appropriate).

[28] *Chao v. A-One Med. Servs., Inc.*, ARB No. 02-067, ALJ No. 2001-FLS-027, slip op. at 6 (ARB Sept. 23, 2004); *Otero County Hosp. Ass'n*, ARB No. 99-038, slip op. at 7-9 (ARB July 31, 2002); *Agosto v. Consol. Edison Co. of New York, Inc.*, ARB Nos. 98-007, 98-152, ALJ Nos. 1996-ERA-002, 1997 ERA-054, slip op. at 7 (ARB July 27, 1999) (requiring "full and fair opportunity" for the litigation of the issues in the prior proceeding).

[29] March 7, 2005 Response to March 3, 2005 Order to Show Cause at 1-2.

[30] *See Montana v. United States*, 440 U.S. 147, 155 (1979) ("To determine the appropriate application of collateral estoppel in the instant case necessitates three further inquiries: first, whether the issues presented by this litigation are in substance the same as those resolved [in the first proceeding]"); *Kidwell v. Dep't of Army*, 56 F.3d 279, 286-87 (D.C. Cir. 1995) ("When a court has decided an issue of fact or law necessary to its judgment, that decision precludes relitigation of an issue 'in substance the same' as that resolved in an earlier proceeding.").

[31] *See Montana*, 440 U.S. at 153-154 (precluding parties from contesting issues they have already had a full and fair opportunity to litigate "protects their adversaries from the expense and

In his Rebuttal Brief, Hasan argues that the Board should refuse to apply the doctrine of issue preclusion.[32] He relies upon the Secretary's decision in *Ewald v. Virginia*. In *Ewald*, the complainant brought a First Amendment claim in the District Court during the discovery stage of her environmental whistleblower litigation in the Department of Labor. The District Court dismissed the claim because Ewald's speech was not the "but for" cause of her termination. The Department of Labor ALJ subsequently dismissed Ewald's whistleblower case on collateral estoppel grounds, holding that she could not relitigate the issue of whether the commonwealth of Virginia retaliated against her because of protected activity. The Secretary reversed the ALJ, holding that under a well-established exception to the application of collateral estoppel, "a party should not be precluded from litigating an issue in a second case where the burden of persuasion on the issue was greater in the first case."[33] Thus, because the "but for" burden of persuasion under the First Amendment is more stringent than the "because of" or "motivating factor" burden under the environmental whistleblower statutes, the exception applied in *Ewald*.[34] Therefore, because the exception to the collateral estoppel rule discussed in *Ewald* does not apply here, Hasan's argument fails.

Hasan further argues that had he had an opportunity for a hearing and discovery, he could show the distinction between *Hasan I* and *II*.[35] The discovery Hasan sought seems to pertain only to the qualifications of the engineers that S & L hired between December 2001 and June 2002.[36] Hasan presents no argument or authority as to how this information would assist him in defending against S & L's collateral estoppel argument.

We are aware that pro se pleadings are held to less exacting standards than those prepared by counsel and are to be liberally construed.[37] Despite the fact that *pro se* filings are construed liberally, the Board must be able to discern cogent arguments in any appellate brief, even one from a *pro se* litigant.[38] For us to consider an argument, a party must develop

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vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions."); *see also Agosto*, slip op. at 7 (holding that there must have been "full and fair opportunity" for the litigation of the issues in the prior proceeding).

[32] Rebuttal Brief at 9-10.

[33] *Ewald v. Virginia*, No. 1989-SDW-001, slip op. at 4-5 (Sec'y Apr. 20, 1995).

[34] *Id.*, slip op. at 5-10.

[35] Rebuttal Brief at 4 ("I did not receive one page of Discovery, no hearing was conducted by ALJ Kane, from Sargent & Lundy for the above case – how can I plead my case . . . before the ARB (this court)?"), 9-10 ("'Issue preclusion' would not prevent another ALJ . . . from making a different finding, based on his independent weighing of the evidence (after Discovery and after Conducting a Hearing), in connection with an additional ERA claim . . . .").

[36] September 3, 2002 Response to Motion to Dismiss at 1, 4.

[37] *See Young v. Schlumberger Oil Field Servs.*, ARB No. 00-075, ALJ No. 2000-STA-028, slip op. at 3 (ARB Feb. 28, 2003); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

[38] *United States ex rel. Verdone v. Circuit Court for Taylor County*, 73 F.3d 669, 673 (7th

the argument with citation to authority.[39] Where, as here, a party fails to develop the factual basis of a claim on appeal and, instead, merely draws and relies upon bare conclusions, the argument is deemed waived.[40]

The ALJ's Harmless Error

The ALJ also held that even if collateral estoppel did not apply, Hasan's claim should be dismissed. The ALJ stated:

> Ultimately, however, the Complainant fails to demonstrate that he was qualified for the available positions and the evidence is insufficient to raise a reasonable inference that the protected activity was a contributing factor in the adverse employment action. Furthermore, as shown in Hasan I, Respondent had shown legitimate, nondiscriminatory reasons for its action. Therefore, like Hasan I, Hasan II warrants dismissal for failing to prove the essential elements of a violation of the employee protection provisions of the ERA.[41]

But in these proceedings, Hasan was defending against S & L's motion for summary decision. His burden therefore was merely to "set forth specific facts showing that there is a genuine issue of fact for the hearing."[42] Requiring Hasan to "prove the essential elements" of his ERA claim when facing a motion for summary decision unfairly burdens him and

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Cir.1995) (per curiam) ("Even pro se litigants, particularly one so familiar with the legal system, must expect to file a legal argument and some supporting authority."); *Pelfresne v. Village of Williams Bay*, 917 F.2d 1017, 1023 (7th Cir.1990) (citations omitted) ("A litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting authority ... forfeits the point. We will not do his research for him.").

39 *See Cruz v. Am. Airlines, Inc.*, 356 F.3d 320, 333-334 (D.C. Cir. 2004) (citations omitted) ("Although we may discern a hint of such an argument after a close reading of plaintiff's reply brief (albeit not a hint supported by both citations to authority and argument, as is required by Federal Rule[s] of Appellate Procedure 28(a)(9)), plaintiff was required to present, argue, and support this claim in his opening brief for us to consider it. We are not 'self-directed boards of legal inquiry and research, but essentially … arbiters of legal questions presented and argued by the parties.'") (citations omitted).

40 *See Dev. Res., Inc.*, ARB No. 02-046, slip op. at 4 (ARB Apr. 11, 2002) *citing Tolbert v. Queens Coll.*, 242 F.3d 58, 75-76 (2d Cir. 2001) (noting that in the Federal Courts of Appeals, it is a "settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived"); *United States v. Hayter Oil Co.*, 51 F.3d 1265, 1269 (6th Cir. 1995) ("It is not our function to craft an appellant's arguments."); *U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir.1991) ("A skeletal 'argument,' really nothing more than an assertion, does not preserve a claim [for appellate review] . . . . Judges are not like pigs, hunting for truffles buried in briefs.").

41 R. D. & O. at 5.

42 29 C.F.R. § 18.40 (c).

constitutes error. But since we dismiss Hasan's claim because of collateral estoppel, the ALJ's error is harmless.

CONCLUSION

Because the issue in *Hasan I* and *II* is the same, and because that issue decided the outcome of *Hasan I*, and because that issue was fully and fairly litigated in *Hasan I*, we conclude that collateral estoppel applies and that no other issue of material fact exists. Therefore, S & L is entitled to summary decision, and we **DENY** Hasan's complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge