

PART XI
ATTORNEY FEES

A. BOARD REVIEW OF ATTORNEY FEE AWARDS MADE BELOW

9. LIABILITY FOR ATTORNEY FEES

(f) Employer's Ability to Pay

Identification of an employer as the responsible operator presumes liability for payment of benefits, including attorney fees, unless employer meets its burden of proving financial inability to pay. If employer meets its burden of proving insolvency, the Trust Fund assumes liability.

The mere assertion that employer is unable to pay is inadequate to meet this burden. In *Borders v. A.G.P. Coal Co.*, 9 BLR 1-32 (1986), since the record indicated no attempt to discover employer's whereabouts or existence, the Board vacated the administrative law judge's decision to dismiss employer, held the Trust Fund temporarily liable for payment of benefits and attorney fees, but remanded this case for further consideration as to the existence, location, and financial situation of employer.

CASE LISTINGS

DIGESTS