

PERCY BURROUGHS)
)
 Claimant-Respondent)
)
 v.)
)
 SSA/COOPER STEVEDORING)
)
 and)
)
 HOMEPORT INSURANCE COMPANY) DATE ISSUED: 12/20/2013
)
 Employer/Carrier-)
 Petitioners)
)
 MILA MANAGED HEALTH CARE)
 TRUST FUND)
)
 and)
)
 GEORGIA STEVEDORE)
 ASSOCIATION/INTERNATIONAL)
 LONGSHOREMEN’S ASSOCIATION)
 WELFARE FUND)
)
 Parties-in-Interest) ORDER on MOTION
) for RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board’s order in this case, *Burroughs v. SSA/Cooper Stevedoring*, BRB No. 13-0340 (Aug. 22, 2013). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Mila Managed Health Care Trust Fund and Georgia Stevedore Association/International Longshoremen’s Association Welfare Fund (the Funds) have responded, urging affirmance of the Board’s Order dismissing employer’s appeal. Claimant has not filed a response. We deny employer’s motion for reconsideration.

The administrative law judge issued a Decision and Order awarding claimant benefits for his work-related injuries; however, the administrative law judge did not address the rights of the Funds to reimbursement, and the Funds filed a motion to amend the administrative law judge’s decision. The administrative law judge considered the

motion as a motion for reconsideration, and he issued an order amending his decision.¹ In light of the motion for reconsideration, the Funds moved to dismiss employer's appeal of the administrative law judge's original decision as having been prematurely filed. The Board granted the motion to dismiss. Employer moves for reconsideration of the dismissal, asserting that the Funds are not "parties" or "parties-in-interest" to this case and do not have legal standing to file a motion to dismiss. Employer argues that the Funds are merely lienholders without the same rights as the "parties" to the case, that they gave themselves the designation "parties-in-interest," and that standing must exist from the inception of the claim by a party who has the capacity to bring a lawsuit.

Section 802.206(f) of the Board's regulations, 20 C.F.R. §802.206(f), states:

If a timely motion for reconsideration of a decision or order of an administrative law judge or [district director] is filed, any appeal to the Board, whether filed prior to or subsequent to the filing of the timely motion for reconsideration, *shall be* dismissed without prejudice as premature. * * * During the pendency of an appeal to the Board, any party having knowledge that a motion for reconsideration of a decision or order of an administrative law judge or [district director] has been filed shall notify the Board of such filing.

(emphasis added). Thus, Section 802.206(f) is to be applied whenever the Board learns of a motion for reconsideration, regardless of whether a motion to dismiss has been filed. *Aetna Casualty & Surety Co. v. Director, OWCP*, 97 F.3d 815, 30 BRBS 81(CRT) (5th Cir. 1996); *Tideland Welding Service v. Sawyer*, 881 F.2d 157, 22 BRBS 122(CRT) (5th Cir. 1989), *cert. denied*, 495 U.S. 904 (1990). As the Board stated in its August 22 Order, a previously filed appeal "is nullified *ipso facto*" when a timely motion for reconsideration has been filed. *Aetna Casualty & Surety Co.*, 97 F.3d 815, 30 BRBS 81(CRT). Thus, we need not address employer's contentions regarding the standing of the Funds. *See, e.g., Alegre v. Chesapeake Kinder Morgan, Inc.*, BRB No. 05-0382 (March 28, 2006) (order) available at <http://www.dol.gov/brb/decisions/Ingshore/unpublished/Mar06/05-0382.htm>. The Board properly dismissed employer's appeal in accordance with the regulation.² 20 C.F.R. §802.206(f).

¹The administrative law judge ordered employer to pay MILA \$14,237.70 for medical benefits paid and claimant to pay GSA-ILA \$11,277.52 for compensation paid. Claimant was to pay the amount from his temporary total disability benefits due between March 31, 2010, and February 22, 2011. Order on Recon. at 3; *see* 33 U.S.C. §§907, 917.

²Employer also takes issue with the Board's statement that its response to the motion to dismiss was "belated." Section 802.219, which addresses motions to the

Accordingly, we deny employer's motion for reconsideration and, therefore, affirm the Board's order dismissing employer's appeal, BRB No. 13-0340. 20 C.F.R. §802.409.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

Board, specifically states that a party has 10 days after it receives its copy of a motion within which to respond. 20 C.F.R. §802.219(e). In any event, the Board addressed employer's response to the motion to dismiss.