



February 22, 2012

**BLBA CIRCULAR NO. 12-01**

**SUBJECT: Recent District Court (Southern District Court of WVA) Action Regarding Additional Compensation under 33 U.S.C. § 914(f)**

Attached is a recent Memorandum Opinion and Order from District Judge John Copenhaver where the court opined that the 20% additional compensation provisions of 33 U.S.C. 914(f) as incorporated into the BLBA under 30 U.S.C. 932(a) were applicable in the instant case along with attorney fee compensation for pursuit of this action.

In this case, the award of benefits to the miner had been finalized, but the employer had filed a Section 22 modification action alleging that the ALJ's compensation order was flawed. Employer then averred that this Section 22 action rendered the ALJ's order as non-final and unenforceable. (If such a position were to be credited by the district court, it would take this enforcement action out of the district court's jurisdiction).

According to Judge Copenhaver, the employer was unable to support this jurisdictional argument. Having found that there was no viable case precedent to support such an argument, the judge found that the district court had jurisdiction to enforce this 914(f) action. There was no question that Pine Ridge Coal had failed to comply with the administrative law judge's award of benefits. And even though the Black Lung Disability Trust Fund had paid interim benefits to the miner during the pendency of the claim proceedings, this did not absolve the employer from its responsibility to fully comply with a lawful ALJ compensation order. [See 33 U.S.C. § 921(b)(3)]

Additionally, it was recognized that the claimant had the right to seek additional attorney's fees that were incurred in pursuit of this Section 914(f) enforcement action.

Pine Ridge was ordered to comply with the provisions of the ALJ's award of benefits (including interest), comply with the ALJ's award of attorney fees and pay additional compensation for overdue amounts.

DCMWC staff should feel free to E-mail me if you have any questions regarding this decision.

Steven D. Breeskin  
Director, Division of Coal  
Mine Workers' Compensation

Distribution: List No. 3 (All Supervisors, Claims Examiners,  
Workers' Compensation Specialists and Field Station Personnel)

Attachment