



BRB No. 15-0454

SARA BRECKON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DYNCORP INTERNATIONAL, LLC	)	
	)	
and	)	DATE ISSUED: <u>Dec. 21, 2016</u>
	)	
INSURANCE COMPANY OF THE STATE	)	
OF PENNSYLVANIA c/o AIG GLOBAL	)	
CLAIMS SERVICES, INCORPORATED	)	
	)	
Employer/Carrier-	)	ORDER on MOTION for
Respondents	)	RECONSIDERATION

Employer has filed a timely Motion for Reconsideration of the Board's Decision and Order in *Breckon v. Dyncorp Int'l, LLC*, BRB No. 15-0454 (Jul. 19, 2016) (unpub). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant has not responded to employer's motion.

Claimant appealed the administrative law judge's finding that the exacerbation of her April 2013 work injury in January 2014 was an "intervening cause" of her disability and the denial of disability compensation after claimant's work-related injury reached maximum medical improvement on December 2, 2013. In its decision, the Board affirmed the administrative law judge's finding that claimant "failed to exercise due care" with respect to her work injury, thereby re-injuring her back and left hip. *Breckon*, slip op. at 4. The Board thus rejected claimant's appeal of the administrative law judge's denial of additional disability compensation. *Id.* However, the Board vacated the administrative law judge's finding that employer is not liable for additional medical benefits after January 10, 2014, as employer remains liable for medical benefits related to the work injury notwithstanding the occurrence of the intervening event. *See generally Colburn v. General Dynamics Corp.*, 21 BRBS 219 (1988).<sup>1</sup> As the administrative law

judge did not address whether any of the treatment claimant received after January 11, 2014, was reasonable and necessary for the treatment of her work injury, the Board remanded the case for him to address this issue.

On reconsideration, employer contends that the Board need not have remanded the case for the administrative law judge to address the medical benefits issue. Employer avers the evidence of record supports the conclusion that the intervening event terminated its liability for medical benefits after January 10, 2014.

We reject employer's contention. It is the administrative law judge's responsibility, and not the Board's, to make findings of fact as to whether claimant's medical treatment after January 10, 2014, was necessitated by her work injury. *See generally Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004). As the administrative law judge did not address this issue, it was proper for the Board to remand the case. Accordingly employer's motion for reconsideration is denied, and the Board's decision is affirmed.

Claimant's counsel has filed a petition for an attorney's fee for services performed before the Board in this appeal.<sup>2</sup> The Act provides that claimant's counsel is entitled to an attorney's fee for success in review proceedings before the Board. 33 U.S.C. §928(b). However, as this case has been remanded for further consideration regarding claimant's entitlement to medical benefits, the degree of counsel's success, if any, has yet to be determined. Thus, an award of a fee for services performed before the Board is premature, and claimant's counsel's fee petition for an attorney's fee is denied at this time. *See generally Warren v. Ingalls Shipbuilding, Inc.*, 31 BRBS 1 (1997). Should claimant obtain additional benefits by virtue of the proceedings on remand, claimant's counsel may refile his fee petition with the Board in accordance with 20 C.F.R. §802.203(c).<sup>3</sup>

---

<sup>1</sup>Employer contends that the facts of this case are distinguishable from *Colburn*, 21 BRBS 219. The Board cited this case for the legal principles stated therein and not for the proposition that employer is, in fact, liable for additional medical benefits. *Breckon*, slip op. at 3.

<sup>2</sup>Counsel seeks a fee of \$28,714.10, representing 58.50 hours of attorney services at \$350 per hour, 12.25 hours of attorney services at \$200 per hour, 22.75 hours of law clerk and legal assistant services at \$200 per hour, and costs of \$1,239.10.

<sup>3</sup>Counsel's fee petition must conform to the requirements of 20 C.F.R. §802.203(d)(3).

Accordingly, employer's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's decision is affirmed. Claimant's counsel's petition for an attorney's fee is denied.

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

GREG J. BUZZARD  
Administrative Appeals Judge

---

JONATHAN ROLFE  
Administrative Appeals Judge