U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 17-0407

WILLIAM MUGERWA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
AEGIS DEFENSE SERVICES	)	DATE ISSUED: 10/19/2018
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	
	)	ORDER on MOTIONS
Employer/Carrier-Respondents	)	for RECONSIDERATION and for an ATTORNEY'S FEE

Employer has filed a timely motion for reconsideration in this case, *Mugerwa v. AEGIS Defense Serv.*, 52 BRBS 11 (2018), including a motion for en banc review. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer contends the Board's standard for establishing the necessity of an order to compel a claimant to sign a medical release form is impossible to meet and "deprives" it "of the one and only mechanism available to [employers] for obtaining discovery from third parties in cases involving overseas claimants." M/Recon. at 1. Claimant responds, urging the Board to deny employer's motion and affirm its decision. Because employer has not established error in the Board's decision, we deny its motion for reconsideration.[1] 20 C.F.R. §802.409.

[1] Employer's dire reading of the Board's standard is overstated. As the Board held, the inquiry for compelling a claimant to sign a medical release form during discovery is whether the employer can "establish a *reasonable inference* of the existence of additional relevant records" that have not been provided. *Mugerwa*, 52 BRBS at 15-16 (emphasis added). The admissibility of any potentially-discovered records is not at issue and need not be proven at this juncture. Further, if employer is correct that claimant produced only one handwritten discharge form from his four-day admission to Mulago Hospital, employer arguably has provided a reasonable inference of the existence of additional records. M/Recon. at 8. Under such circumstances, a "narrowly-tailored" medical release form directed at the hospital records may be warranted. *Mugerwa*, 52 BRBS at 14-16.

Claimant's counsel has filed a petition for an attorney's fee for work performed before the Board in this case. Employer has filed objections contending, among other things, that the fee request is premature. We agree. The Board's decision resulted from an appeal of an interlocutory order, and there has been no adjudication or success on the claim for benefits. This was merely a "tactical victory" for claimant for which a fee is not yet awardable. *Warren v. Ingalls Shipbuilding, Inc.*, 31 BRBS 1 (1997); *see also* 33 U.S.C. §928; *E.P. Paup Co. v. Director, OWCP*, 999 F.2d 1341, 27 BRBS 41(CRT) (9th Cir. 1993); *George Hyman Constr. Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161(CRT) (D.C. Cir. 1992); *Hole v. Miami Shipyard Corp.*, 640 F.2d 769, 13 BRBS 237 (5th Cir. 1981); *Davis v. United States Dep't of Labor*, 646 F.2d 609 (D.C. Cir. 1980). Thus, we deny claimant's counsel's request for an attorney's fee award at this time. 20 C.F.R. §802.203.

Accordingly, employer's motion for reconsideration is denied, and the Board's decision is affirmed.[2] 20 C.F.R. §802.409. 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

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[2] As the panel has unanimously voted to deny employer's motion for reconsideration, its motion for en banc review is moot. 20 C.F.R. §§801.301(c), 802.407(d).