

U.S. Department of Labor

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



PATRICIA SPARKS  
(o/b/o Estate of RICKY ALLEN SPARKS)

Claimant-Petitioner

v.

LOCUST GROVE, INCORPORATED

and

KENTUCKY EMPLOYERS' MUTUAL  
INSURANCE

Employer/Carrier-  
Respondents

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS, UNITED  
STATES DEPARTMENT OF LABOR

Party-in-Interest

DONALD RAY MARCUM

Claimant-Petitioner

v.

EXCEL MINING, LLC

and

) BRB No. 24-0472 BLA

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**PUBLISHED**

DATE ISSUED: 05/08/2026

BRB No. 25-0076 BLA

Self-Insured through ALLIANCE )  
 RESOURCES PARTNERS, LP )  
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 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
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 Party-in-Interest )

DECISION and ORDER

Appeal of the Orders Denying Attorneys Fee Petitions of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Evan B. Smith (AppalReD Legal Aid), Prestonsburg, Kentucky, and Leonard Stayton, Inez, Kentucky, for Claimants.

Thomas L. Ferreri and Matthew J. Zanetti (Ferreri Partners, PLLC), Louisville, Kentucky, for Employer, Locust Grove, Incorporated.

Sara May (Jones & Jones Law Office PLLC), Pikeville, Kentucky, for Employer, Excel Mining, LLC, self-insured through Alliance Resources Partners, LP.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, as *amicus curiae*, in support of Claimants.

David Casserly (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant Patricia Sparks and Claimant Donald Ray Marcum (Claimants) appeal Administrative Law Judge (ALJ) John P. Sellers, III's Orders Denying Attorneys Fee Petitions (2021-BTD-00001 and 2022-BTD-00002) relating to medical benefits awards in miners' claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C.

§§901-944 (Act).<sup>1</sup> The Director, Office of Workers' Compensation Programs (the Director), initiated these actions on behalf of the Black Lung Disability Trust Fund (Trust Fund) to recover interim medical benefits that the Trust Fund paid for the Miners' medical treatment expenses, while the Employers in these claims contested whether the medical expenses were payable under the Act. Claimants retained counsel, who participated fully in the medical benefits proceedings before the Office of Administrative Law Judges (OALJ).

In *Marcum*, the Director sought reimbursement of \$41,005.16 in Trust Fund-paid interim medical benefits, and in *Sparks*, the Director sought reimbursement of \$50,308.04 in Trust Fund-paid interim medical benefits. In both cases, Employers contested their liability for the disputed medical expenses on the ground that the treatments were not reasonable or necessary for either Miner's pneumoconiosis, and they requested hearings before the OALJ. The ALJ issued Decisions and Orders awarding medical benefits in both cases, finding each Employer liable for its respective payment and reimbursement of medical benefits. Following the ALJ's awards of medical benefits, Claimants' counsel filed fee petitions for attorney fees for work performed before the ALJ in these medical benefits cases. Citing the Benefits Review Board's unpublished majority opinion in *B.F. [Fuller] v. S. Hollow Coal Co.*, BRB No. 09-0710 BLA (July 20, 2010) (unpub.), the ALJ denied both petitions, determining no adversarial relationships existed between Claimants and Employers.

On appeal, Claimants contend the ALJ erred in those findings. Employers, in separate briefs, respond in support of the ALJ's denials. Wolfe Williams & Austin filed an *amicus curiae* brief in support of Claimants' entitlements to attorney fees. The Director filed a response, urging the Board to vacate the ALJ's orders denying the fee petitions and to remand the cases for consideration of appropriate awards of attorney fees. Claimants have filed a consolidated reply to Employers' responses, reiterating their contentions.

The Board's scope of review is defined by statute. We must affirm the ALJ's Orders if they are rational, supported by substantial evidence, and in accordance with applicable law.<sup>2</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

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<sup>1</sup> Claimant Patricia Sparks is the widow of Ricky Allen Sparks, who died on July 20, 2022, while the action to recover interim medical benefits was pending before the ALJ.

<sup>2</sup> The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because each Miner performed his last coal mine employment in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Sparks Hearing Tr. at 18; Marcum Director's Exhibit 1 at 7.

Claimants assert adversarial relationships existed between Claimants and Employers because Employers contested the compensability of specific medical treatment as not reasonable or necessary, subjecting Claimants to the risk of overpayment proceedings and requiring their participation in the formal hearings before the ALJ. Claimants' Brief at 13-21, 29-30. They argue the Board's unpublished decision in *Fuller*, BRB No. 09-0710 BLA, is factually and legally distinguishable and does not govern the circumstances presented here. *Id.* at 21-37. We agree with Claimants' arguments and reverse the ALJ's denials of attorney fees.

Section 28(a) of the Longshore and Harbor Workers' Compensation Act, as incorporated into the Black Lung Benefits Act by 30 U.S.C. §932(a), provides for the award of a reasonable fee to a claimant's counsel who successfully prosecutes a claim on his behalf. 33 U.S.C. §928(a); *see B & G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 657, 661 (6th Cir. 2008). The Department's implementing regulation further provides, "An attorney who represents a claimant in the successful prosecution of a claim for benefits may be entitled to collect a reasonable attorney's fee from the responsible operator that is ultimately found liable for the payment of benefits" if "the operator or [Trust Fund], as appropriate, took action, or acquiesced in action, that created an adversarial relationship between itself and the claimant." 20 C.F.R. §725.367(a). The regulation sets forth a non-exclusive list of examples of adversarial relationships warranting the payment of an attorney's fee, including when "[t]he claimant submits a bill for medical treatment, and the party liable for the payment of benefits declines to pay the bill on the grounds that the treatment is unreasonable, or is for a condition that is not compensable." 20 C.F.R. §725.367(a)(3).

In *Fuller*, the miner died before any dispute arose over reimbursement of medical benefits, and his widow participated in the case as the claimant. BRB No. 09-0710 BLA, slip op. at 2 n.1; *B.F. [Fuller] v. S. Hollow Coal Co.*, OALJ No. 2004-BTD-00001, slip op. at 1-2 (Aug. 7, 2008) (unpub.). The Director and the employer entered into an agreement resolving their reimbursement dispute and agreed they would not seek subrogation, indemnification, or contribution from the claimant, the miner's estate, or the miner's medical providers. *See Fuller*, OALJ No. 2004-BTD-00001, slip op. at 4-5. The ALJ in *Fuller* dismissed the case on those terms. *Id.* She subsequently awarded the claimant's counsel an attorney's fee, finding an adversarial relationship existed between the employer or Trust Fund and the claimant under 20 C.F.R. §725.367(a)(3) because the employer had declined to reimburse the Trust Fund on the ground that the treatment was not compensable. *Fuller*, BRB No. 09-0710 BLA, slip op. at 3-4.

The Board reversed the fee award, holding under those unique facts that no adversarial relationship existed between the employer or Trust Fund and the claimant because the Trust Fund had paid all medical benefits and neither the employer nor the Director sought, or could seek, reimbursement from the claimant or the miner's estate.

*Fuller*, BRB No. 09-0710 BLA, slip op. at 3-4. The Board further explained that “[b]ecause all of the miner’s bills for medical treatment were paid by the Trust Fund, they were not ‘declined,’ as required under Section 725.367(a)(3) in order for liability for the payment of attorneys’ fees to attach [under that subsection].” *Id.* at 4. The Board specifically emphasized its holding was based on the narrow facts of that case. *Id.*

Relying on *Fuller*, the ALJ in this case concluded Claimants had no adversarial relationships with Employers that gave rise to an obligation to pay attorney fees under 20 C.F.R. §725.367. The ALJ read *Fuller* as holding that an employer’s contesting of reimbursement of Trust Fund-paid medical benefits does not create a present adversarial relationship if the medical treatment bills were not “declined” as 20 C.F.R. §725.367(a)(3) requires, and the possibility of any future overpayment proceedings against Claimants did not create, adversarial relationships. Marcum Fee Order at 2-3; Sparks Fee Order at 3. He further reasoned that because neither Employers nor the Trust Fund had sought reimbursements for the overpayment of any medical bills from Claimants or Miner Sparks’s estate, no adversarial relationships had yet arisen between Claimants and Employers. Marcum Fee Order at 3; Sparks Fee Order at 3.

The holding in *Fuller* is not so broad. The ALJ correctly read *Fuller* as holding 20 C.F.R. §725.367(a)(3) does not justify an attorney fee award if payment of a claimant’s medical bills has not been “declined.” But he misread *Fuller* as either establishing a categorical rule that no adversarial relationship ever exists in employer-Trust Fund reimbursement disputes or a requirement that an actual claim is necessary for reimbursement of an overpayment against the claimant. Section 725.367(a) contains no such limitations, and whether a claimant’s counsel is entitled to an attorney fee award under Section 725.367(a) turns on whether the liable responsible operator or the Trust Fund took, or acquiesced in, action that created an adversarial relationship between itself and the claimant. Unlike in *Fuller*, that occurred here.

In *Fuller*, the claimant was a nominal party to the employer-Trust Fund reimbursement dispute because the Director and employer entered into an agreement eliminating any possibility of reimbursement from the claimant, the miner’s estate, or the miner’s medical providers of any medical benefits the Trust Fund paid to the claimant. Thus, no possibility of reimbursement exposure against the claimant remained. The Board’s holding that there was no adversarial relationship in *Fuller* did not suggest a claimant must be the subject of a reimbursement proceeding for an adversarial relationship to exist. Rather, *Fuller* turned on the absence of the possibility of the claimant’s liability for reimbursement, as the agreement eliminated any possibility of reimbursement from the claimant.

By contrast, no such agreement exists here; Claimants remained exposed to the potential liability for the reimbursement of an overpayment of medical benefits that the

Trust Fund paid to Claimants arising from the reimbursement disputes between Employers and the Trust Fund.<sup>3</sup> Although Employers and the Trust Fund had not yet pursued reimbursement directly from the Claimants, that fact does not dispose of Claimants' possible reimbursement liability.<sup>4</sup>

By contesting reimbursement to the Trust Fund for the Miners' medical treatment expenses, Employers created an adversarial relationship with Claimants because their actions placed Claimants' interests at stake, which required their participation to protect those interests. Under these circumstances, Claimants were not nominal parties to the medical reimbursement disputes at issue in these cases, and the ALJ's conclusion that no adversarial relationships existed is not in accordance with law. 20 C.F.R. §725.367(a). We therefore reverse the ALJ's findings that no adversarial relationships existed between Claimants and Employers, vacate the denials of attorney fees, and remand these cases for consideration of Claimants' counsels' fee petitions and the awarding of appropriate fees.<sup>5</sup>

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<sup>3</sup> The regulations governing overpayments provide benefits paid by the Trust Fund to which a beneficiary is not entitled are subject to recovery. *See* 20 C.F.R. §§725.540-547. Recovery may be sought from the overpaid beneficiary; if that beneficiary dies before adjustment is completed, recovery may be effectuated through repayment by the estate of the deceased, overpaid beneficiary. 20 C.F.R. §725.540(c), (d). The district director implicitly recognized as much when she urged Claimants to obtain counsel "to be certain [their] interests are fully protected at the hearing." Sparks Director's Exhibit 19 at 5; Marcum Director's Exhibit 20 at 4. The ALJ recognized the same in encouraging Claimants to obtain qualified representation and requiring their participation at the hearings. *See* Sparks Notice of Hearing & Pre-Hearing Order at 6 (Mar. 17, 2021); Marcum Notice of Hearing & Pre-Hearing Order at 6 (June 8, 2023).

<sup>4</sup> Until the ALJ determined whether the disputed medical expenses were properly payable under the Act, the Trust Fund had no occasion to pursue recovery of any alleged overpayment, and Employers, having not paid the contested medical expenses, had no reimbursement claim to assert.

<sup>5</sup> Because *Fuller* is factually distinguishable and therefore does not control these cases, we need not address Claimants' additional argument that the Board's analysis in *Fuller* under Section 725.367(a)(3) was misplaced.

Accordingly, we reverse the ALJ's Orders Denying Attorneys Fee Petitions and remand these cases for further consideration consistent with this decision.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge