

U.S. Department of Labor

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



BRB No. 25-0411 BLA

EARNEST L. GREEN)
)
 Claimant-Petitioner)
)
 v.)
)
 U.S. STEEL MINING COMPANY)
 ALABAMA, LLC)
)
 and)
)
 UNITED STATES STEEL CORPORATION)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 02/26/2026

ORDER

By Order dated December 1, 2025, the Benefits Review Board acknowledged the appeal in BRB No. 25-0411 BLA and instructed Claimant to file his Petition for Review and brief within thirty days of receiving the Board’s acknowledgement. *Green v. U.S. Steel Mining Co.*, BRB No. 25-0411 BLA (Dec. 1, 2025) (Order) (unpub.). On December 2, 2025, Employer filed its Motion to Dismiss, asserting Claimant did not timely file his Notice of Appeal. Employer’s Motion to Dismiss (Dec. 2, 2025). Claimant has not responded to the Board’s acknowledgement of appeal or Employer’s motion to dismiss.

Section 21(a) of the Longshore and Harbor Workers’ Compensation Act, 33 U.S.C. §901 *et seq.*, incorporated into the Black Lung Benefits Act, 30 U.S.C. §901 *et seq.*, by 30 U.S.C. §932(a), provides in relevant part that “unless proceedings for the suspension or

setting aside of [a compensation] order are instituted as provided in subsection (b) of this section, [that order] shall become final at the expiration of the thirtieth day thereafter.” 33 U.S.C. §921(a); 30 U.S.C. §932(a); 20 C.F.R. §802.205 (notice of appeal must be filed with the Board within 30 days from when an administrative law judge’s (ALJ’s) order has been filed). Because Congress did not “clearly state[]” any jurisdictional consequences in Section 21(a), the 30-day filing deadline is a mandatory claim-processing rule that must be invoked by the parties, not a jurisdictional requirement independently enforceable by the Board. *Dominguez v. Bethlehem Steel Corp. et al.*, BLR , BRB Nos. 24-0222, 24-0201, and 24-0390 BLA, slip op. at 4 (Sep. 25, 2025) (Order) (citing *Harrow v. Dep’t of Defense*, 601 U.S. 480, 484 (2024); *Riley v. Bondi*, 606 U.S. 259, 275 (2025)).¹

ALJ Drew A. Swank issued his Decision and Order Denying Benefits (2022-BLA-05790) on April 10, 2025. The ALJ’s Decision and Order correctly informed Claimant that his appeal, if any, must be filed with the Board within thirty days of the date on which the ALJ’s Decision and Order is filed with the district director’s office. Decision and Order at 26; *see* 20 C.F.R. §802.205(a). On July 17, 2025—ninety-eight days after the ALJ filed his Decision and Order—the Office of the Clerk of the Appellate Boards received Claimant’s electronically filed Notice of Appeal.² Notice of Appeal; *see* 20 C.F.R. §§802.221(c), 802.222(e)(4).

As Employer asserts, Employer’s Motion to Dismiss (Dec. 2, 2025) at 2, there is no indication of activity on the eFiling dashboards for the Office of Administrative Law Judges or the Board between the date of the ALJ’s Decision and Order and the receipt of Claimant’s Notice of Appeal on July 17, 2025. Claimant has not asserted he experienced any technical difficulties with the electronic filing system that may have prevented him

¹ Notably, the regulation at 20 C.F.R. §802.205 does not—and cannot—create a statutory jurisdictional boundary. Jurisdiction turns on Congress “clearly stat[ing]” a statute is jurisdictional, not on an agency’s interpretation of the governing statute. *See Dominguez v. Bethlehem Steel Corp. et al.*, BLR , BRB Nos. 24-0222, 24-0201, and 24-0390 BLA, slip op. at 4 n.5 (Sep. 25, 2025) (Order) (citing *Harrow v. Dep’t of Defense*, 601 U.S. 480, 484 (2024)); *see also Villegas v. Noem*, 149 F.4th 554, 567 (5th Cir. 2025) (“[W]e must search for ‘a clear tie between the deadline and the jurisdictional grant.’”) (citation omitted). Regardless, Employer timely invoked the rule here by filing its motion to dismiss.

² The Board also received an electronically filed Request for Reconsideration of the ALJ’s Decision and Order on July 17, 2025. There is no indication the ALJ has considered or addressed Claimant’s Request for Reconsideration or whether it was timely filed, and the Board will not do so in the first instance.

from timely filing his appeal. *See* 20 C.F.R. §802.222(d)(5). Likewise, Claimant has not asserted any issue with ineffective service of the ALJ's Decision and Order. *See* 20 C.F.R. §725.478. Thus, Claimant's appeal is untimely, and we grant Employer's motion. 20 C.F.R. §802.219.

Accordingly, we dismiss Claimant's appeal of the ALJ's Decision and Order.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge