

U.S. Department of Labor

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



BRB No. 19-0192 BLA
Case No. 2016-BLA-05941

| | | |
|-------------------------------|---|-------------------------|
| RONALD F. CLOTHIER |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| HERITAGE COAL COMPANY, LLC |) | DATE ISSUED: 01/12/2021 |
| |) | |
| and |) | |
| |) | |
| PEABODY ENERGY CORPORATION |) | |
| |) | |
| Employer/Carrier- |) | |
| Petitioners |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | ORDER on |
| Party-in-Interest |) | RECONSIDERATION |

GRESH, Administrative Appeals Judge:

Employer has filed a timely motion for reconsideration of the Benefits Review Board's Decision and Order in this case, *Clothier v. Heritage Coal Co., LLC*, BRB No. 19-0192 BLA (June 30, 2020) (unpub.) (Rolfe, J., concurring). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). The Director, Office of Workers' Compensation Programs, responds, urging denial of Employer's motion.

We deny the motion as Employer has not demonstrated error in the Board's holding that Employer waived its right to challenge the district director's appointment in this case.

Clothier, slip op. at 3-4. Accordingly, we affirm the Board’s decision. 20 C.F.R. §§801.301(c), 802.409.

SO ORDERED.

DANIEL T. GRESH
Administrative Appeals Judge

I concur:

MELISSA LIN JONES
Administrative Appeals Judge

ROLFE, Administrative Appeals Judge, concurring:

I would grant Employer’s motion for reconsideration but deny it relief on the additional ground that, even if the issue had not been waived, *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018) does not establish that district directors are “inferior officers” to whom the Appointments Clause applies, as stated in my concurring opinion in this case. *Clothier*, slip op. at 17-22.

JONATHAN ROLFE
Administrative Appeals Judge