

U.S. Department of Labor

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



BRB No. 24-0261

MAVERICK QUALLS )

Claimant-Petitioner )

v. )

SSA TERMINALS, LLC )

and )

HOMEPORT INSURANCE COMPANY )

Employer/Carrier- )  
Respondents )

**NOT-PUBLISHED**

DATE ISSUED: 02/27/2026

DECISION and ORDER

Appeal of the Order Denying Reconsideration of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Philip R. Weltin (Weltin, Streb & Weltin, LLP), Oakland, California, for Claimant.

Alan J. Chang (Sibia, Chang & Bruyneel, LLP), Daly City, California, for Employer and Carrier.

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant’s counsel Philip R. Weltin (Counsel) appeals the Order Denying Reconsideration (OALJ No. 2021-LHC-01377) of Administrative Law Judge (ALJ) Christopher Larsen rendered on a claim for an attorney’s fee filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). We must affirm the ALJ’s findings of fact and conclusions of law if they are rational,

supported by substantial evidence, and in accordance with applicable law.<sup>1</sup> 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

On February 15, 2024, the ALJ issued an Attorney Fee Order (Fee Order) awarding Counsel a total of \$202,541.30, representing a fee award of \$177,125.96 plus the full amount of requested costs, \$25,415.34. But the award did not include Counsel’s unopposed request for a fee on behalf of his hourly-rate expert, Steven A. Tasher of Wyatt Partners. Although the ALJ acknowledged the Tasher fee request, the Fee Order did not indicate why it was not included in the fee award. Fee Order at 4, 32-33.

Twenty-seven days later, on March 13, 2024, Counsel filed a Motion Pursuant to Fed. R. Civ. P. 59(e) to Amend the Court’s Judgment, requesting the ALJ amend the Fee Order to include the Tasher fee as it was unopposed, and the ALJ did not address it.<sup>2</sup> Employer responded on March 15, 2024, that the motion was time-barred under the Office of Administrative Law Judges Rules of Practice and Procedure (OALJ Rules) as an untimely motion for reconsideration. *See* Emp.’s Resp. to Rule 59(e) Motion.

On March 19, 2024, the ALJ issued an Order Denying Reconsideration (Recon. Order). He acknowledged the Federal Rules of Civil Procedure apply in situations not provided for by the Act, the OALJ Rules, or other regulations pursuant to 29 C.F.R. §18.10 but found “no discernable difference” between a motion for reconsideration and a Fed. R. Civ. P. 59(e) motion to alter or amend a judgment. Recon. Order at 1. Because the OALJ Rules require a party to file a motion for reconsideration within ten days of service of the decision, 29 C.F.R. §18.93,<sup>3</sup> the ALJ found the Federal Rules did not apply and dismissed Counsel’s motion as untimely. *Id.* at 1-2.

On April 16, 2024, Counsel appealed to the Board. Notably, Counsel’s Notice of Appeal does not specifically appeal the Fee Order but names only the Order Denying Reconsideration as the subject of his appeal. Counsel argues the ALJ abused his discretion

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<sup>1</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because Claimant sustained his injury in California. 33 U.S.C. §921(c); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff’d*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

<sup>2</sup> Fed. R. Civ. P. 59(e) states: “A motion to alter or amend a judgment must be filed no later than 28 days after entry of the judgment.”

<sup>3</sup> *See also* 20 C.F.R. §802.206(b)(1), which requires motions for reconsideration of an ALJ’s decision to be filed within ten days of the date the decision or order was filed with the district director.

in omitting the unopposed Tasher fee without explanation and then compounded his error by refusing to amend the Fee Order pursuant to Rule 59(e). Counsel’s Pet. for Review at 4-6. Counsel maintains there is a difference between an ALJ’s “reasoned omission” – which would require a motion for reconsideration to correct – and an “unreasoned omission” – for which Rule 59(e) is the appropriate remedy. Counsel’s Reply Br. at 1-2. As he asserts the omission of the Tasher fee was the latter, Counsel argues the ALJ should have granted his motion to amend pursuant to Rule 59(e). *Id.* at 2.

In response, Employer argues the ALJ did not err in finding Counsel’s Rule 59(e) motion constituted an untimely motion for reconsideration. Emp.’s Resp. Br. at 8-12. Alternatively, Employer moved to dismiss Counsel’s appeal to the Board as untimely, arguing the time-barred motion for reconsideration failed to toll Section 21(a)’s thirty-day deadline to appeal the original Fee Order. Mot. to Dismiss at 4-8; *see* 33 U.S.C. §921(a); 20 C.F.R. §§802.205(a), 802.206(a).

The sole issue on appeal is whether the ALJ erred in finding Counsel’s motion to alter or amend the ALJ’s Fee Order – brought pursuant to Fed. R. of Civ. P. 59(e) – constituted an untimely motion for reconsideration of the ALJ’s fee order. The rules establish different deadlines: a party has twenty-eight days to file a Rule 59(e) motion under the Federal Rules but only ten days to file a motion for reconsideration under the OALJ rules. *See* Fed. R. Civ. P 59(e); 20 C.F.R. §802.206(b)(1); 29 C.F.R. §18.93. There is no dispute Counsel filed his Rule 59(e) motion beyond the ten-day deadline for reconsideration but within the twenty-eight-day deadline for a Rule 59(e) motion.

And it is equally apparent the ALJ did not err in finding Counsel’s Rule 59(e) motion is a time-barred motion for reconsideration under settled law. “Rule 59(e) does not apply to proceedings under the Act in view of specific reconsideration provisions” found in the OALJ Rules. *Zumwalt v. Nat’l Steel & Shipbuilding Co.*, 52 BRBS 17, 21 (2018); *see* 20 C.F.R. §802.206(b)(1); 29 C.F.R. §§18.10(a), 18.93. As use of Rule 59(e) is improper in proceedings under the Act, the ALJ correctly interpreted Counsel’s request as a motion for reconsideration. Because the motion for reconsideration was untimely, the ALJ appropriately denied it.

Accordingly, we affirm the ALJ's Order Denying Reconsideration.<sup>4</sup>

SO ORDERED.

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

GLENN E. ULMER  
Administrative Appeals Judge

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<sup>4</sup> We deny Employer's motion to dismiss as moot. However, to the extent Counsel is also appealing the underlying Fee Order, any such appeal is hereby dismissed, as an untimely motion for reconsideration does not toll Section 21(a)'s appeal deadline. 22 U.S.C. §921(a).