



BRB Nos. 18-0038 BLA
and 18-0039 BLA

OLA MAE HAMPTON)
(Widow of and o/b/o the Estate of)
EDGAR HAMPTON))

Claimant-Petitioner)

v.)

ANR COAL COMPANY, LLC, formerly)
ENTERPRISE COAL COMPANY)

DATE ISSUED: 10/30/2018

and)

OLD REPUBLIC GENERAL INSURANCE)
CORPORATION)

Employer/Carrier-)
Respondents)

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

Party-in-Interest) ORDER

Employer/carrier (employer) appeals the Order Awarding Attorney Fees (2008-BLA-5389 and 2012-BLA-6075) of Administrative Law Judge Steven D. Bell in connection with a subsequent miner's claim and a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (the Act). On June 6, 2017, the administrative law judge issued a Decision and Order Awarding Benefits on both claims. Thereafter, claimant's counsel submitted a fee petition to the administrative law judge, requesting \$2,293.75 for legal services rendered in the miner's claim from May 7, 2012 to November 9, 2012. Counsel also requested \$11,475.00 for

legal services rendered in the survivor's claim from August 6, 2012 to December 21, 2012 and June 25, 2013 to June 8, 2017, and expenses in the amount of \$4,517.72. The administrative law judge granted counsel's fee request in its entirety on September 14, 2017.

Employer appealed the underlying awards of benefits in the miner's claim and the survivor's claim to the Board. On May 23, 2018, the Board issued an order remanding the case to the administrative law judge "to promptly reconsider the substantive and procedural actions previously taken and to issue a decision on the merits accordingly. 20 C.F.R. §802.405(a)." *Hampton v. ANR Coal Co.*, BRB Nos. 17-0525 BLA and 17-0526 BLA, Order at 2 (May 23, 2018) (unpub.). Because the Board remanded the case for reconsideration of the underlying awards of benefits, the fee order in this case, which relates to work performed in furtherance of those benefits, must also be remanded.¹

Accordingly, we vacate the administrative law judge's Order Awarding Attorney Fees, and remand this case to the Office of Administrative Law Judges for reassignment to the new and properly appointed administrative law judge who will adjudicate the underlying claims for benefits that were the subject of May 23, 2018 remand order.² If

¹ The dispositive issue before the Board in the underlying case was whether the administrative law judge was properly appointed under the Appointments Clause of the United States Constitution, such that his Decision and Order was valid. After the Board issued its remand Order, the Supreme Court decided *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018), in which the Court held that Securities and Exchange Commission administrative law judges are inferior officers under the Appointments Clause and, therefore, must be appointed by the President, a court of law, or the head of a department. *Lucia*, 138 S.Ct. at 2051. The Director, Office of Workers' Compensation Programs, conceded that in cases in which the Appointments Clause challenge was timely raised, and in which the administrative law judge took significant actions without having been properly appointed, the challenging party is entitled to the remedy specified in *Lucia*, specifically a new hearing before a new and properly appointed administrative law judge.

² The Board's May 23, 2018 order remanded the claims to the original administrative law judge with instructions for him to "reconsider the substantive and procedural actions previously taken and to issue a decision on the merits accordingly." *Hampton v. ANR Coal Co.*, BRB Nos. 17-0525 BLA and 17-0526 BLA, Order at 2 (May 23, 2018) (unpub.). The Supreme Court's subsequent decision in *Lucia*, however, makes clear that those claims cannot be heard by the prior administrative law judge, but must be reassigned for a new hearing before a new and properly appointed administrative law judge. *Lucia*, 138 S.Ct. at 2055.

benefits are awarded, that administrative law judge should consider any attorney fee petitions filed at that time.³

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

³ Any attorney fee awarded in connection with the miner's claim or the survivor's claim is not effective or enforceable until there has been a successful prosecution of a claim and the award of benefits is payable. *See Goodloe v. Peabody Coal Co.*, 19 BLR 1-91, 1-100 n.9 (1995).