



BRB No. 17-0278 BLA  
Case No. 2016-BLA-05055

PATRICIA DENNIS (Widow of, and on	)	
behalf of the Estate of, JAMES W. DENNIS)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CHEVRON MINING, INCORPORATED	)	
	)	
and	)	DATE ISSUED: 09/27/2018
	)	
P & M COAL MINING	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS’	)	
COMPENSATION PROGRAMS, UNITED	)	ORDER on
STATES DEPARTMENT OF LABOR	)	RECONSIDERATION and
	)	AWARD OF FEES
Party-in-Interest	)	

As no member of the panel has voted to vacate or modify the decision herein, the motion for reconsideration filed by employer is DENIED.<sup>1</sup> 33 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(b); 802.407(a); 802.409.

<sup>1</sup> Employer argues for the first time on reconsideration that the manner in which Department of Labor administrative law judges are appointed violates the Appointments Clause of the Constitution, Art. II § 2, cl. 2. Employer’s Motion for Reconsideration at 4-5. Because employer first raised the Appointments Clause issue only after the Board issued its decision on the merits, employer forfeited the issue. See *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018) (requiring “a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party’s] case”); see also *Williams v.*

Claimant's counsel, Brent Yonts has filed a complete, itemized statement requesting a fee for services performed before the Board pursuant to 20 C.F.R. §802.203. Counsel requests a fee of \$1,313.33 for 6.57 hours of legal services at an hourly rate of \$200. Employer has not filed an objection to counsel's fee petition.

Upon review of the fee petition, the Board concludes the requested fee to be reasonable in light of the services performed, and thus approves a fee of \$1,313.33, to be paid directly to claimant's counsel by employer.<sup>2</sup> 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §802.203.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

RYAN GILLIGAN  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

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*Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995) (the Board generally will not consider new issues raised by the petitioner after it has filed its brief identifying the issues to be considered on appeal); *Senick v. Keystone Coal Mining Co.*, 5 BLR 1-395, 1-398 (1982).

<sup>2</sup> The Board's award in this matter is of no precedential value given that counsel's fee petition is unopposed.