



BRB No. 17-0457 BLA
Case No. 2015-BLA-05671

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|-------------------------------|---|-------------------------|
| DORRIS E. CUNNINGHAM |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| ISLAND CREEK COAL COMPANY |) | |
| |) | DATE ISSUED: 09/05/2018 |
| Employer-Respondent |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | ORDER on |
| Party-in-Interest |) | RECONSIDERATION |

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

¹ Claimant 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. Claimant’s Motion for Reconsideration at 9-10. Because claimant first raised the Appointments Clause issue only after the Board issued its decision on the merits, claimant waived 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. 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).

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge