



BRB No. 18-0339 BLA

WALTER H. CHRISTIAN, JR.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
WESTMORELAND COAL COMPANY)	DATE ISSUED: 09/27/2019
Self-Insured Through WESTMORELAND)	
COAL COMPANY c/o HEALTHSMART)	
CASUALTY CLAIMS SOLUTIONS)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Morris D. Davis,
Administrative Law Judge, United States Department of Labor.

Walter H. Christian, Jr., Big Stone Gap, Virginia.

Paul E. Frampton and Fazal A. Shere (Bowles Rice LLP), Charleston, West
Virginia, for employer/carrier.¹

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and
GRESH, Administrative Appeals Judges.

¹ By letter dated August 13, 2019, Bowles Rice LLP withdrew as counsel for
employer in this claim.

PER CURIAM:

Claimant appeals, without the assistance of counsel,² the Decision and Order Denying Benefits (2016-BLA-05684) of Administrative Law Judge Morris D. Davis, rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on March 25, 2014.

By letter dated July 25, 2019, the Board informed claimant that a recent Supreme Court decision, *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018), may apply to his case. The Board explained that it would consider whether *Lucia* applies to claimant's case only if claimant asked the Board to do so. Therefore, the Board asked claimant to respond whether he wanted the *Lucia* issue to be considered. The Board further explained that, should *Lucia* be found to apply, the case would be remanded for a new hearing before a different administrative law judge. Claimant responded that he wanted the Board to consider whether *Lucia* applies.

By orders dated August 16, 2019 and September 13, 2019, the Board informed the other parties of claimant's request and provided time to respond. The Director responded that based on the particular facts of this case, she does not object to remand and reassignment to another, properly appointed administrative law judge.³ Employer did not file a response to claimant's request for review pursuant to *Lucia*.

The Supreme Court held in *Lucia* that Securities and Exchange Commission administrative law judges were not appointed by the head of the agency in accordance with the Appointments Clause of the Constitution. The Court further held that because the petitioner timely raised his Appointments Clause challenge, he was entitled to a new hearing before a new and properly appointed administrative law judge. *Id.*

The Department of Labor (DOL) has expressly conceded that the Court's holding in *Lucia* applies to DOL administrative law judges. See *Big Horn Coal Co. v. Sadler*, 10th

² Robin Napier, a benefits counselor with Stone Mountain Health Services, St. Charles, Virginia, filed an appeal on behalf of claimant, but Ms. Napier is not representing claimant on appeal. *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

³ The Director concedes that because the Board does not require unrepresented petitioners to file an opening brief and identify the issues on appeal, claimant's affirmative response to the Board's July 25, 2019 order asking if he wanted the *Lucia* issue to be considered is sufficient to timely raise an Appointments Clause challenge. Director's Brief at 1 n.1.

Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6. The Secretary of Labor, exercising his power as the Head of a Department under the Appointments Clause, ratified the appointment of all DOL administrative law judges on December 21, 2017, prior to the issuance of the administrative law judge’s decision in this case. However, the administrative law judge held a hearing in this case on March 7, 2017, during which he admitted evidence and heard testimony by claimant. Decision and Order at 2. Because the administrative law judge took significant actions before the Secretary ratified his appointment, his subsequent actions are tainted by the Appointments Clause violation. As the Board has held, “*Lucia* dictates that when a case is remanded because the administrative law judge was not constitutionally appointed, the parties are entitled to a new hearing before a new, constitutionally appointed administrative law judge.” *Miller v. Pine Branch Coal Sales, Inc.*, BLR , BRB No. 18-0323 BLA, slip op. at 4 (Oct. 22, 2018) (en banc).

Accordingly, we vacate the administrative law judge’s Decision and Order Denying Benefits, and remand this case to the Office of Administrative Law Judges for reassignment to a new administrative law judge and for further proceedings consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge