



BRB Nos. 18-0393 BLA
and 18-0394 BLA
Case Nos. 2011-BLA-05768
and 2013-BLA-06127

RUBY L. ALLEN)
(Widow of and o/b/o JEWELL HART)
ALLEN))
)
Claimant-Respondent)
)
v.)
)
CROWN ENERGY CORPORATION)
)
and)
)
AMERICAN RESOURCES INSURANCE)
COMPANY)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)

DATE ISSUED: 09/09/2019

ORDER on
RECONSIDERATION and
AWARD of FEES

Employer has filed a motion for reconsideration in the captioned case, again raising an Appointments Clause challenge.¹ Claimant did not file a response brief. The Director,

¹ Because Administrative Appeals Judge Ryan Gilligan is no longer a member of the Board, Chief Administrative Appeals Judge Judith S. Boggs is substituted on this panel. 20 C.F.R. §802.407(a).

Office of Workers' Compensation Programs, responds that the Board should deny employer's motion for reconsideration because its Appointments Clause challenge was untimely raised and extraordinary circumstances do not excuse employer's forfeiture of this issue.

In an Order issued on November 26, 2018, the Board denied employer's motion to remand the case because employer waived its Appointments Clause challenge by not raising the issue in its opening brief to the Board and did not demonstrate why the untimely constitutional challenge should be addressed. *Allen v. Crown Energy Corp.*, BRB Nos. 18-0393 BLA and 18-0394 BLA (Nov. 26, 2018) (Order) (unpub.). Subsequently, in its decision on the merits, the Board affirmed the finding that the miner had at least fifteen years of qualifying coal mine employment, thereby invoking the Section 411(c)(4) presumption. As no other issues were challenged and the Board had previously affirmed the finding that employer did not rebut the Section 411(c)(4) presumption, the Board affirmed the administrative law judge's awards on remand in both the miner's and survivor's claims. *Allen v. Crown Energy Corp.*, BRB Nos. 18-0393 BLA and 18-0394 BLA (June 18, 2019) (unpub.).

In its motion for reconsideration, employer does not raise any challenges to the Board's decision on the merits. Rather, employer again raises an Appointments Clause challenge and seeks reassignment of this case to a different, constitutionally-appointed administrative law judge.

We deny employer's motion for reconsideration of the Appointments Clause issue because it was untimely filed. The Board's Rules of Practice and Procedure require that motions for reconsideration of interlocutory orders, such as the one the Board issued on November 26, 2018, must be filed within ten days from the date the order is filed. 20 C.F.R. §802.219(i).² Thus, employer's motion for reconsideration of the Board's Order of

² 20 C.F.R. §802.219(i) states:

Reconsideration of orders. Any party adversely effected by any interlocutory order issued under paragraph (g) or (h) may file a motion to reconsider, vacate or modify the order within 10 days from its filing, stating the grounds for such request. Any motion for reconsideration, vacation or modification of an interlocutory order shall be referred to a three-member panel that may include any member who previously acted on the matter. Suggestions for en banc reconsideration of interlocutory orders shall not be accepted. Reconsideration of all other orders will be treated under §802.407 of this part.

November 26, 2018, had to have been filed by December 6, 2018. Having been filed on July 23, 2019, it is untimely.³

Claimant's counsel has filed a complete, itemized statement requesting an attorney's fee for services performed before the Board pursuant to 20 C.F.R. §802.203. Counsel requests a fee of \$1,383.33 for 6.92 hours of legal services at an hourly rate of \$200.00. Employer has not filed an objection to counsel's fee petition.

Upon review of the fee petition, we find the requested fee to be reasonably commensurate with the necessary services performed in defending the awards of benefits. We thus approve a fee of \$1,384.00,⁴ to be paid directly to claimant's counsel by employer.⁵ 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §802.203.

³ Employer's motion for reconsideration was filed within thirty days of the Board's decision on the merits. *See* 20 C.F.R. §802.407(a) (thirty-day deadline for filing motion for reconsideration of "decision or non-interlocutory order"). As explained, however, employer was required to file its motion for reconsideration within ten days of the Board's interlocutory order on the Appointments Clause issue. 20 C.F.R. §802.219(i).

⁴ We correct counsel's computation error: $\$200.00 \times 6.92 = \$1,384.00$.

⁵ The Board's award in this matter is of no precedential value given that counsel's fee petition is unopposed.

Accordingly, we deny employer's motion for reconsideration as untimely filed. We award claimant's counsel an attorney's fee of \$1,384.00.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge