



BRB No. 16-0022

RANDOLPH BESSARD	)	
	)	
Claimant-Respondent	)	
	)	
TONY B. JOBE	)	
(Former attorney for claimant)	)	
	)	
Petitioner	)	
	)	
v.	)	
	)	
C & D PRODUCTION SPECIALIST	)	DATE ISSUED: <u>Nov. 8, 2016</u>
COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
LOUISIANA WORKERS'	)	
COMPENSATION CORPORATION	)	
	)	
Employer/Carrier	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER on MOTION for
	)	RECONSIDERATION

Claimant’s former counsel, Tony B. Jobe, has filed a timely motion for en banc reconsideration of the Board’s July 5, 2016 Decision and Order in the captioned case, *Bessard v. C & D Productions Specialist Co.* [*Bessard II*], BRB No. 16-0022 (July 5, 2016) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. No response briefs have been filed. We grant counsel’s motion for reconsideration en banc, but deny the relief requested.

In his motion for reconsideration, counsel contends the Board’s statement in *Bessard v. C & D Productions Specialist Co.* [*Bessard I*], BRB No. 15-0071 (Aug. 25, 2015) (unpub.), *aff’d on recon. en banc* (Order, Dec. 15, 2015), that the district director had not previously awarded any attorney’s fees for his work on behalf of

claimant between November 5, 2003 and August 24, 2004, pursuant to Section 28(b), 33 U.S.C. §928(b), conflicts with the Board's statement, in *Bessard II*, that counsel "has already been awarded a fee payable by employer pursuant to Section 28(b) for work performed from November 1, 2003 through August 24, 2004." *Bessard II*, slip op. at 4. Counsel also alleges that the Board's calculations, in *Bessard II*, as to the total number of hours for which counsel sought a fee and was compensated at the district director level do not accurately reflect the services claimed by counsel in this case.

Contrary to counsel's assertion, the Board's decisions in *Bessard I* and *Bessard II* do not conflict. In *Bessard I*, the Board stated that a fee payable by claimant pursuant to Section 28(c), 33 U.S.C. §928(c), is not precluded merely because the district director had previously found that employer is not liable for a fee for services in a given time frame, here November 5, 2003, to August 24, 2004. In accordance with the Board's remand instructions, the district director addressed counsel's entitlement to an attorney's fee under Section 28(c) for the entries in question. Upon further investigation of the fee petition, the district director stated that his previous Order had an attorney's fee for the period that encompassed November 2003 to August 2004. The Board's statement in *Bessard II* thus reflects the district director's finding, on remand, that counsel had already been awarded a fee payable by employer pursuant to Section 28(b) for the specific time frame in question; the Board reviewed the accuracy of that determination on appeal. The statements in *Bessard I* and *II* are, therefore, accurate reflections as to the state of the case, in terms of the appropriate law, at the time each decision was issued.

Counsel's fee petition has been thoroughly examined on multiple occasions under each of the relevant provisions of 33 U.S.C. §928, and counsel has been awarded an attorney's fee totaling \$79,560.45, whether pursuant to Section 28(b) or Section 28(c) for all compensable work. See Order Denying Motion for Reconsideration dated June 17, 2016. For this reason, any error in *Bessard II* regarding the itemization of work at the Office of Administrative Law Judges and/or Office of Workers' Compensation Programs, respectively, is harmless.

Accordingly, counsel's motion for reconsideration en banc is granted, but the relief requested is denied. The Board's decision is affirmed. 20 C.F.R. §§801.301(c); 802.409.

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

JUDITH S. BOGGS  
Administrative Appeals Judge

---

GREG J. BUZZARD  
Administrative Appeals Judge

---

RYAN GILLIGAN  
Administrative Appeals Judge

---

JONATHAN ROLFE  
Administrative Appeals Judge