

BRB Nos. 10-0624  
and 10-0624A

ROBERT J. MATSON	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
PACIFIC NORTHERN	)	DATE ISSUED: 10/05/2011
ENVIRONMENTAL	)	
	)	
and	)	
	)	
ZURICH AMERICAN	)	
INSURANCE COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	ORDER on MOTION
Cross-Petitioners	)	for RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board’s decision in the captioned case, *Matson v. Pacific Northern Environmental*, BRB Nos. 10-0624/A (July 6, 2011)(unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant responds that employer’s motion should be denied.

In its decision, the Board vacated the administrative law judge’s finding that employer established the availability of suitable alternate employment, and remanded the case for consideration of all of the relevant evidence regarding whether employer established that claimant has the necessary vocational skills to realistically compete for and perform the jobs identified in employer’s labor market survey.<sup>1</sup> In its motion,

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<sup>1</sup>In its decision, the Board rejected claimant’s additional contention that the administrative law judge erroneously found that claimant did not establish that he was unable to work in alternate employment due to his participation in a vocational rehabilitation program. The Board agreed with claimant’s alternative argument that the administrative law judge incorrectly calculated the award of scheduled permanent partial disability benefits, and directed that the award be modified if scheduled benefits are again awarded on remand. With respect to employer’s cross-appeal, the Board rejected

employer asks the Board to reconsider its decision based on two documents that employer has attached to its motion for reconsideration. We must deny employer's request, as evidence which is not part of the record developed at the hearing before the administrative law judge cannot be accepted or considered by the Board. 33 U.S.C. §921(b)(3); 20 C.F.R. §802.301(b). If employer seeks to have this new evidence considered by the administrative law judge, it may file with the administrative law judge a request that the record be reopened on remand or it may request modification pursuant to Section 22 of the Act, 33 U.S.C. §922. 20 C.F.R. §§702.373, 802.301(c). Employer's motion for reconsideration is therefore denied. 20 C.F.R. §§801.301(c), 802.409.

Claimant's counsel has filed a fee petition for work performed before the Board in this case. Employer has not filed a response to counsel's fee petition. As this case has been remanded to the administrative law judge for further consideration, and as the degree of success claimant will ultimately achieve is yet to be determined, we deny at this time claimant's request for a fee for work performed before the Board. Claimant's counsel may refile his attorney's fee petition with the Board after the administrative law judge issues a decision on remand. 20 C.F.R. §802.203(c).

Accordingly, employer's motion for reconsideration is denied and the Board's decision is affirmed. 20 C.F.R. §§801.301(c), 802.409. Claimant's petition for an attorney's fee for work performed before the Board in this case is denied at this time. 20 C.F.R. §802.203(c).

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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employer's arguments regarding the commencement date for permanent partial disability benefits and the administrative law judge's denial of a credit against any potential recovery from claimant's pending Jones Act action.