



BRB No. 19-0441 BLA

RUTH GRIFFITH)	
(Widow of CHARLES GRIFFITH))	
)	
Claimant-Respondent)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	
COMPANY, c/o UNDERWRITERS)	
SAFETY & CLAIMS)	
)	
and)	DATE ISSUED: 4/29/2022
)	
Self-Insured Through PEABODY ENERGY)	
CORPORATION)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	ORDER on
)	RECONSIDERATION and
Party-in-Interest)	AWARD OF FEES

Employer and its Carrier (Employer) have filed a timely motion for reconsideration of the Benefits Review Board’s decision in *Griffith v. E. Assoc. Coal Co.*, BRB No. 19-0441 BLA (Feb. 25, 2021) (unpub.), affirming the award of benefits. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). Claimant and the Director, Office of Workers’ Compensation Programs, oppose Employer’s motion. After consideration of Employer’s contentions, no

member of the panel has voted to vacate or modify the Board's decision.¹ Therefore, Employer's motion for reconsideration is denied. 20 C.F.R. §§801.301(c), 802.409.

Claimant's counsel has filed a complete, itemized statement requesting an attorney's fee for services performed before the Board. 20 C.F.R. §802.203. Counsel requests a fee of \$1,375.00, representing 1.5 hours of legal services by Joseph E. Wolfe at an hourly rate of \$350.00, 3.75 hours of legal services by Brad A. Austin at an hourly rate of \$200.00, and 1 hour of services by a legal assistant at an hourly rate of \$100.00. 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 award of benefits. We thus approve a fee of \$1,375.00, to be paid directly to Claimant's counsel by Employer.² 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §802.203.

¹ Employer argues the Board failed to address its argument that the ALJ erred in finding that, under a successor-operator analysis in accordance with 20 C.F.R. §§724.493(b)(2) and 725.495(a)(2)(i), liability falls first on Eastern Associated Coal Company (Eastern) and its parent company Peabody Energy Corporation (Peabody), before Patriot Coal Corporation. Employer's Motion for Reconsideration at 3; Employer's Brief at 40-42. However, the Board has already affirmed the ALJ's alternative finding that Eastern, as self-insured by Peabody, was never released from liability and meets all the requirements for liability under the Act at 20 C.F.R. §§725.494, 725.495. *Griffith v E. Associated Coal Co.*, BRB No. 19-0441 BLA, slip. op. at 13-15 (Feb. 25, 2021) (unpub.). We therefore reject Employer's argument. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

² 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. Employer is ordered to pay Claimant's counsel an attorney's fee of \$1,375.00.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge