

PART V

BENEFITS REVIEW BOARD POLICIES AND PROCEDURES

B. POLICIES AND PROCEDURES

3. MOTIONS FOR RECONSIDERATION

The Board's Rules of Practice and Procedure permit any party in interest, within ten days from the filing of a decision, to request reconsideration of such decision. 20 C.F.R. §802.407. Additionally, pursuant to Section 21(b)(5) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §921(b)(5) (1986), incorporated by 30 U.S.C. §932(a), any party aggrieved by a decision of a panel of the Board may, within 30 days after the date of entry of the decision, petition the entire permanent Board for review of the panel's decision. Upon affirmative vote of the majority of the permanent members of the Board, the petition shall be granted.

CASE LISTINGS

[Board denied a motion for reconsideration no supplemental brief was filed requesting application of ***Echo v. Director, OWCP***, 744 F.2d 332, 6 BLR 2-110 (3d Cir. 1984) notwithstanding its issuance eight months prior to Board's decision] ***Witherow v. Rushton Mining Co.***, 8 BLR 1-232 (1985).

[despite lack of implementing regulations for Section 21(b)(5) of the Longshore Act, Board held it had authority to consider Motion for Reconsideration en banc because intent of statute will not be defeated due to lack of implementing regulations] ***Williamson v. Zeigler Coal Co.***, 8 BLR 1-401 (1985).

DIGESTS

Relying on ***Amax Coal Co. v. Director, OWCP [Oxendine]***, 892 F.2d 578, 14 BLR 2-12 (7th Cir. 1989), the Board held that an administrative law judge's Decision and Order becomes final thirty days after it is filed in the district director's office and that an administrative law judge is without authority to extend the thirty day period. ***Mecca v. Kemmerer Coal Co.***, 14 BLR 1-101 (1990).

The Board held that the Director's second motion for reconsideration challenging

claimant's entitlement to benefits, filed thirty days after the administrative law judge's original decision and order but within thirty days of the administrative law judge's supplemental decision and order, was not timely filed inasmuch as the Director's motion second motion was filed more than 30 days after the issuance of the decision and order it contested, namely the administrative law judge's original decision and order. The Board further noted that even if the Director's second motion were considered timely, the Director would still be precluded from challenging the merits of claimant's entitlement because his failure to raise the issue in his first motion resulted in the issue being waived. ***Knight v. Director, OWCP***, 14 BLR 1-166 (1991).

The Board denied employer's second Motion for Reconsideration. Following the affirmance of an award in this case, employer timely requested reconsideration but instead of providing the required rationale, requested that the Board issue an order to establish a "briefing order." In denying the motion, the Board relied on the procedural regulations requiring that such a motion include "the supporting rationale" and providing the time periods for the appropriate "briefing order." ***Harner v. International Anthracite Corp.***, BRB No. 97-0964 BLA (Order July 10, 1998)(unpub.). Employer again requested reconsideration, stating that the Board reversed its position of granting additional time for a briefing order and that eliminating this "safety valve" would prejudice employer's ability to adequately present their case. The Board rejected employer's motion, stating that the Board's goal of timely adjudication of all appeals was aided by the applicable regulations, 20 C.F.R. §§802.219, 802.407, 802.408, insuring no unnecessary delays without a demonstrated extraordinary circumstance. ***Harner v. International Anthracite Corp.***, 21 BLR 1-93 (1998).

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