



BRB No. 17-0313 BLA
Case No. 2012-BLA-05542

RALPH E. ENGLISH)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CHEVRON MINING, INCORPORATED)	DATE ISSUED: 08/23/2018
)	
and)	
)	
PITTSBURG & MIDWAY COAL MINING)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	ORDER on
)	RECONSIDERATION and
Party-in-Interest)	AWARD of FEES

As no member of the panel has voted to vacate or modify the decision herein, the motion for reconsideration filed by employer is DENIED.¹ 33 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(b); 802.407(a); 802.409.

¹ Employer argues for the first time on reconsideration that the manner in which Department of Labor administrative law judges are appointed violates the Appointments Clause of the Constitution, Art. II § 2, cl. 2. Employer’s Motion for Reconsideration at 4-6. The Director, Office of Workers’ Compensation Programs (the Director), responds that employer waived this argument by failing to raise it in its opening brief. Director’s Response at 2-3. We agree with the Director. Because employer first raised the Appointments Clause issue only after the Board issued its decision on the merits, employer waived the issue. *See Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018) (requiring “a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party’s] case”); *see also Williams v. Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995) (the Board generally will not consider new issues raised by the petitioner after it has filed its brief identifying the issues to be considered on appeal); *Senick v. Keystone Coal Mining Co.*, 5 BLR 1-395, 1-398 (1982).

Claimant's counsel, Brent Yonts, has filed a complete, itemized statement requesting a fee for services performed before the Board pursuant to 20 C.F.R. §802.203. Counsel requests a fee of \$1,516.66 for 7.59 hours of legal services at an hourly rate of \$200.00. No objection to the fee petition has been filed.

Review of the fee petition reflects that counsel requests a fee for 0.50 of an hour of legal work performed on May 1, 2017 for "Counsel[']s] motion to dismiss appeal." Motion for Attorney's Fees (Attachment). The Board searched its docket system and found no record of a motion to dismiss the appeal in this case. We therefore disallow the .50 of an hour requested for this service. 20 C.F.R. §802.203(d).

In all other respects, the Board finds the requested fee to be reasonable in light of the necessary services performed. After reducing the total hours by 0.50 of an hour, to

7.09 hours of legal services, the Board approves a total fee of \$1,418.00, 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.

HALL, Chief

BETTY JEAN

Administrative Appeals Judge

RYAN GILLIGAN

Administrative Appeals Judge

ROLFE

JONATHAN

Administrative Appeals Judge

² The Board's award in this matter is of no precedential value given that counsel's fee petition is unopposed.