BRB No. 11-0576 BLA

TED ELLERY SANSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PENN COAL CORPORATION	)	DATE ISSUED: 07/18/2011
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER OF DISMISSAL

On May 16, 2001, Leonard Stayton, counsel for claimant in the above referenced case, filed an appeal with the Board, challenging a "Proposed Order Supplemental Award Fee for Legal Services," issued by the district director on March 24, 2011. The district director awarded attorney fees in the amount of $687.50 for 2.75 hours of legal services rendered by Mr. Stayton in the successful prosecution of claimant's federal black lung claim. The district director, however, disallowed $75.00 for the cost of obtaining a rereading of an x-ray dated December 9, 2008, because that rereading had not been submitted as evidence, while the case was before the district director's office, and could not be considered an expense incurred while the case was before the district director. Mr. Stayton requested reconsideration, which was denied on April 27, 2011. Thereafter, Mr. Stayton filed the current appeal with the Board, which was acknowledged and assigned BRB No. 11-0576 BLA.

On June 14, 2011, the Board received a letter from Wendy G. Adkins, counsel for the West Virginia Coal Workers' Pneumoconiosis Fund (the WVCWP Fund), indicating that Mr. Stayton received payment for the $75.00 x-ray expense, pursuant to a check

issued by the WVCWP Fund on May 26, 2011. A copy of the check was enclosed with the letter.

Claimant's counsel filed a brief with the Board on July 11, 2011, acknowledging that he received payment for the cost of the x-ray. Although Mr. Stayton concedes that the issue of reimbursement of the x-ray expense is now moot, he requests that the Board issue an advisory opinion as to the propriety of the district director's finding that the x-ray expense was not "incurred" while this case was pending before the district director. Claimant's Brief at 4.

Generally, an action is considered "moot" when it no longer presents a justiciable controversy because issues involved have become academic or settled. *Sigma Chi Fraternity v. Regents of University of Colo.*, 258 F.Supp. 515, 523 (D. Colo. 1966). In such cases, the Board will refrain from deciding the appeal because of the well-established policy in federal practice against issuing advisory opinions. *See, e.g., Andrews v. Petroleum Helicopters, Inc.*, 15 BRBS 166 (1982). Because Mr. Stayton received payment for the x-ray expense, this appeal no longer presents any real case or controversy for adjudication. Therefore, the appeal in BRB No. 11-0576 BLA is dismissed and claimant's request for an advisory opinion is denied. *See Lewis v. Continental Bank Corp.,* 404 U.S. 472 (1990).

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge