

LYNETTE CHARPENTIER)	
(Widow of ZEBY CHARPENTIER, JR.))	
)	
Claimant-Respondent)	
)	
v.)	
)	
ORTCO CONTRACTORS,)	DATE ISSUED: 01/31/2006
INCORPORATED)	
)	
and)	
)	
LOUISIANA WORKERS')	
COMPENSATION CORPORATION)	
)	
Employer/Carrier-)	DECISION and ORDER
Petitioners)	on RECONSIDERATION

Appeal of the Decision and Order - Denying Benefits of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

William R. Mustian, III (Stanga & Mustian), Metairie, Louisiana, for claimant.

Travis R. LeBleu (Johnson, Stiltner & Rahman), Baton Rouge, Louisiana, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant has filed a timely motion for reconsideration of the Board's decision in this case, *Charpentier v. Ortco Contractors, Inc.*, 39 BRBS 55 (2005). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. We hereby grant reconsideration of our prior decision, but we affirm our prior decision with modification.

To recapitulate, claimant's husband (the decedent) died after going into cardiac

arrest while working for employer on October 12, 1996, prompting her to seek death benefits under the Act. *See* 33 U.S.C. §909. Administrative Law Judge Larry W. Price denied benefits on the ground that claimant did not establish that the decedent's death was work-related. The Board vacated Judge Price's denial of benefits and remanded the case for further consideration, holding that a causal relationship between decedent's employment and his fatal heart attack was established as a matter of law. *See Charpentier v. Ortco Contractors, Inc.*, BRB No. 00-0812 (May 9, 2001) (unpub.). On remand, Judge Price awarded claimant death benefits, funeral expenses, and interest, and that award was affirmed by the Board. *See Charpentier v. Ortco Contractors, Inc.*, BRB No. 02-0115 (April 17, 2002) (unpub.).

On review, the United States Court of Appeals for the Fifth Circuit reversed the Board's decision and held that substantial evidence supported the administrative law judge's initial determination that decedent's death was not work-related. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1056 (2003). The court therefore vacated both opinions of the Board and instructed that the case be remanded to the Office of Administrative Law Judges for reinstatement of Judge Price's initial decision, which denied benefits to claimant. *Id.* Employer ceased payment of benefits as of May 23, 2003, the date of the court's decision. On August 29, 2003, Judge Price issued an order on remand reinstating the initial denial of benefits pursuant to the Fifth Circuit's decision. Claimant's Petition for Writ of Certiorari with the United States Supreme Court was denied on December 1, 2003.

Claimant then asserted she was entitled to compensation for the period from May 24, 2003, to December 1, 2003, *i.e.*, the time between the issuance of the Fifth Circuit's decision and the Supreme Court's denial of certiorari. The case was forwarded to the Office of Administrative Law Judges and assigned to Administrative Law Judge Patrick M. Rosenow (the administrative law judge), who rejected claimant's assertion and therefore denied additional benefits. On appeal, the Board affirmed the administrative law judge's denial of benefits for the time in question based on Section 21(c) of the Act, 33 U.S.C. §921(c), which states that the court of appeals may "set aside" the Board's decision and that payments to claimant "required by an award" are to continue unless stayed by the court. The Board also noted Rule 41(c) of the Federal Rules of Appellate Procedure (FRAP), *i.e.*, the mandate rule, which indicates that the judgment of the court of appeals becomes final upon issuance and fixes the parties' obligations as of that date. *Charpentier*, 39 BRBS 55.

On reconsideration, claimant asserts that the Board's reliance on the "mandate rule" of Rule 41(c) of the FRAP is incorrect, as the Board failed to apply Rule 41(b) which provides that where a Petition for Rehearing has been filed with the Court of Appeals, the mandate is not considered to have been entered until seven calendar days after entry of an order denying a timely Petition for Rehearing. Claimant therefore contends that as it is undisputed that the Fifth Circuit issued its denial of her petition for a

rehearing on July 2, 2003, claimant is entitled to benefits through that date.

In its decision, the Board rejected the only contention claimant raised on appeal, namely that the language of Section 21(c) requires the payment of benefits up until the time that the United States Supreme Court denied certiorari in this case. *Charpentier*, 39 BRBS at 58. The Board held, pursuant to Section 21(c) that “as of the date of issuance of the Fifth Circuit’s decision ‘setting aside’ the Board’s order, as suggested by employer and determined by the administrative law judge, there was no longer any amount ‘required by an award’ since that decision effectively terminated the prior award of benefits.” *Id.* This, in and of itself, is a sufficient ground for affirming the administrative law judge’s denial of benefits.

Nevertheless, the Board provided additional alternative grounds for affirming the administrative law judge’s denial of benefits, citing both the mandate rule and Rule 41 of the FRAP. While claimant’s interpretations of Rules 41(b) and 41(d)(1) are correct,¹ in that those provisions provide for a stay of the court’s mandate until the issuance of the court’s denial of a petition for rehearing, this does not alter the underlying fact that for purposes of Section 21(c) of the Act, there was no longer any amount “required by an award” as of the date of the appellate court’s initial decision, *i.e.*, May 21, 2003. The appellate court’s denial of a rehearing merely affirmed that tribunal’s earlier decision to reverse the award of benefits in this case. Thus, claimant’s contentions regarding the impact of Rule 41 of the FRAP are insufficient to establish error in the Board’s decision affirming the administrative law judge’s denial of additional benefits pursuant to Section 21(c).

¹ The record contains the denial of claimant’s petition for rehearing before the United States Court of Appeals for the Fifth Circuit dated July 2, 2003. That document includes a “Clerk’s Note” referencing Rule 41 of the FRAP for “stay of the mandate.”

Accordingly, claimant's motion for reconsideration is granted, but the relief requested is denied. 20 C.F.R. §802.409. The Board's decision is affirmed. Thus, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge