

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



REBECCA DOMINGUEZ	)	BRB No. 24-0222
(Successor of Decedent MARY ELLEN	)	Case No. 2015-LHCA-0071
RUBI, Widow of JOHN F. RUBI)	)	OWCP No. 13-106632
)	
Claimant-Petitioner)	
)	
v.)	
)	
BETHLEHEM STEEL CORPORATION)	
)	
Employer)	
)	
DIRECTOR, OFFICE OF WORKERS’)	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	
)	
)	
NASER ZABID	)	BRB No. 24-0201
	)	Case Nos. 2021-LDA-00992
Claimant-Petitioner	)	and 2021-LDA-02761
	)	OWCP Nos. 18-408170
v.	)	and 18-430950
)	
VHB GLOBAL, INCORPORATED,)	
Subcontractor to VALLIANT)	
GOVERNMENT SERVICES, LLC,)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS’)	

COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-In-Interest)	
)	
)	
)	
CONRAD LESTER	)	BRB No. 24-0390 BLA
	)	Case No. 2021-BLA-05624
Claimant-Respondent	)	OWCP No. 22ZGS-2020226
)	
v.)	
	)	NOT-PUBLISHED
BLACKHAWK MINING, LLC)	
)	
and	)	DATE ISSUED: 01/21/2025
)	
ROCKWOOD CASUALTY INSURANCE COMPANY)	
)	
Employer/Carrier-Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	ORDER ACKNOWLEDGING APPEALS and DIRECTING LIMITED BRIEFING
)	
Party-In-Interest)	

The Benefits Review Board hereby acknowledges the appeals in the above-captioned cases with the assigned BRB numbers.¹ Upon consideration of the appeals, it is ORDERED that these cases are consolidated for purposes of briefing only on the issues presented below. 20 C.F.R. §§802.304, 802.305.

¹ Except as otherwise outlined in this Order, briefing in the above-captioned cases is held in abeyance. See 20 C.F.R. §§802.211-802.213, 802.215.

The issues to be addressed by the parties' briefs are as follows:

(1) Given the United States Supreme Court's holding in *Harrow v. Department of Defense*, 601 U.S. 480 (2024), is the time specified for filing an appeal with the Board a jurisdictional requirement or a claims processing rule? *See* 33 U.S.C. §921(a).²

(2) If the time specified for filing an appeal with the Board is a claims processing rule under *Harrow* and a notice of appeal is filed after that time, who has the burden to raise the timeliness of the notice of appeal before the Board?

(3) When and how must the issues of timeliness, equitable tolling, or both be raised?

(4) If the appropriate party fails to raise the issue of an appeal's timeliness, how do forfeiture, waiver, or equitable estoppel apply, if at all?

(5) When may the Board raise the issue of an appeal's timeliness on its own initiative?

Within thirty days of receipt of this Order, each party must submit a brief addressing these issues and explain how they apply to the facts of the party's case. Each brief must be served on all parties in the above-captioned cases.

We also invite the filing of simultaneous *amicus curiae* briefs that address the issues set forth above. Those who intend to file an *amicus* brief must do so within thirty days of this Order's issuance date. *Amicus* briefs must be filed electronically at this email address: Contact-Boards@dol.gov. The Board will not accept an *amicus* brief filed in any other

² Section 21(a) states:

Effectiveness and finality of orders

A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subsection (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

33 U.S.C. §921(a). Relevant to these consolidated appeals, in *Dominguez* the Director has moved to dismiss as untimely filed the claimant's appeal of the district director's fee award. *See* Director's Motion to Dismiss. In *Zabid*, the employer moved to dismiss as untimely filed the claimant's appeal of an administrative law judge's (ALJ's) decision on reconsideration. *See* Employer's Motion to Dismiss. In *Lester*, the Board has identified the employer's appeal of an ALJ's decision as having been filed beyond the thirty-day period. *See* Employer's Notice of Appeal.

way or by any other means. The Board will serve on the parties to these consolidated cases copies of any timely-submitted *amicus* brief it receives.

Thereafter, upon receipt of all initial briefs and any *amicus* briefs, the Board will issue a subsequent scheduling order allowing the parties forty-five days from the date of that order to file their response briefs.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge