



BRB No. 18-0582 BLA
Case No. 2013-BLA-05611

WILLIE A. SOWARDS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
TROJAN MINING, INCORPORATED,)	
d/b/a SUN GLO COAL COMPANY,)	DATE ISSUED: 02/28/2022
INCORPORATED)	
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	ORDER on
)	RECONSIDERATION
Party-in-Interest)	EN BANC

Employer and its Carrier (Employer) have filed a timely motion for reconsideration en banc of the Benefits Review Board’s decision in *Sowards v. Trojan Mining, Inc.*, BRB No. 18-0582 BLA (Sept. 25, 2019) (unpub.), affirming the award of benefits. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). The Director, Office of Workers’ Compensation Programs responds in support of the Board’s decision. Claimant has not filed a response.

Employer’s contentions that the Board erred in holding it forfeited its challenge to the administrative law judge’s (ALJ’s) appointment and that there was no basis for excusing its forfeiture lack merit, as the Board properly rejected Employer’s arguments,

consistent with applicable law. *See Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 749-54 (6th Cir. 2019); Employer’s Motion at 1-7. Further, Employer’s arguments regarding the constitutionality of the Affordable Care Act and the severability of its amendments to the Black Lung Benefits Act are moot. *California v. Texas*, 593 U.S. , 141 S. Ct. 2104, 2120 (2021); Employer’s Motion at 9.

Finally, regarding when the payment of benefits should begin Employer argues the ALJ erred in finding Claimant’s job as a federal mine inspector is not “comparable” to his previous coal mining job. It asserts the ALJ did not explain why the differing exertional requirements and specialized skills of the two jobs outweighed their similar compensation and dust conditions when he found the two jobs not comparable. Employer’s Motion at 8-9. As the Board held in its prior decision, the ALJ “considered several factors, including exertional requirements, skills required to perform the jobs, earnings and dust conditions” and permissibly weighed those factors to find “that while [C]laimant’s job as an inspector was gainful, it was not comparable to his work as a coal miner due to both the significantly more demanding exertional requirements and specialized skills necessary for that job.” *Sowards*, BRB No. 18-0582 BLA, slip op. at 7. As substantial evidence supports the ALJ’s finding, we again reject Employer’s argument. *See Ratliff v. Benefits Review Board*, 816 F.2d 1121, 1125-26 (6th Cir 1987) (directing ALJs to focus more on whether the skills and abilities being used are similar to those formerly used in a mine than on whether the earnings and working conditions are similar).

Accordingly, we deny Employer's motion for reconsideration en banc. 20 C.F.R. §§801.301(b), (c), 802.407(b), (d), 802.409.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge