U.S. Department of Labor

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

BRB No. 23-0317 & 23-0317A

ERGÜL AYDIN (Widow of UFUK AYDIN), o/b/o HERSELF and HER CHILDREN (D.C.A. and D.S.A.)	)	
Respondent Cross-Petitioner	)	**NOT-PUBLISHED**
v.	)	
KOLIN CONSTRUCTION	)	DATE ISSUED: 12/04/2024
Employer-Petitioner Cross-Respondent	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Respondent	)	DECISION and ORDER

Appeals of the Decision & Order Awarding Benefits and the Order Denying Reconsideration and Addressing Other Motions of Noran J. Camp, Administrative Law Judge, United States Department of Labor.

Daniel J. Louis (Diamond Louis, PLLC), New York, New York, for Claimant.

Thomas O. Crist and Richard E. Hepp (Benesch, Friedlander, Coplan & Aronoff LLP), Cleveland, Ohio, for Employer.

Matthew W. Boyle (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Jennifer Feldman Jones, Deputy Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the

Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals, and Claimant cross-appeals, Administrative Law Judge (ALJ) Noran J. Camp's Decision & Order Awarding Benefits and Order Denying Reconsideration and Addressing Other Motions (2019-LDA-01446) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), and as extended by the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant's deceased husband, Decedent, worked for Employer as a Technical Office Manager on the Farah to Ring Road project in Afghanistan from August 30, 2005, to February 7, 2006. EX 2. On February 7, 2006, Decedent was killed by an improvised explosive device in Employer's contractor company's vehicle.[1] CXs 1, 7. On October 20, 2006, Claimant, on behalf of herself and her daughters, and Employer executed a Compromise and Release Letter (Release Letter), which provided Claimant would "not file a lawsuit for the purposes of this event" against Employer on behalf of herself and her daughters in exchange for $100,000 U.S. dollars (USD).[2] EX 10.

Notwithstanding the Release Letter, Claimant filed a claim under the DBA for death benefits on January 5, 2017, alleging entitlement for herself and her two daughters. CX 23. Employer controverted the claim, arguing Decedent's employment was not covered by the DBA, Claimant's claim was untimely filed, and it was barred by the Release Letter. AJX 1. The case was forwarded to the Office of Administrative Judges (OALJ), where the

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the district director who filed the ALJ's decision is in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011); *see also Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019).

[2] At the time of Decedent's death, Claimant's and Decedent's daughters were fifteen years old and seven years old. CXs 23, 28.

parties opted for a decision on the record in lieu of a formal hearing. On December 21, 2022, the ALJ issued his Decision & Order Awarding Benefits (D&O), finding Claimant is entitled to a death benefits award under the DBA but her daughters are not.

The ALJ found Decedent's employment was covered by 42 U.S.C. §1651(a)(5) of the DBA because the contract under which he worked was financed by the United States Agency for International Development (USAID).[3] D&O at 13-14. Moreover, the ALJ determined Claimant's claim was timely filed because Employer knew of Decedent's death but failed to file the Section 30(a) report, 33 U.S.C. §930(a). D&O at 13-14. He also concluded the Release Letter does not bar Claimant's rights under the DBA because the Release Letter did not reference the DBA and 33 U.S.C. §915(b) precludes a claimant from entering an agreement that waives her right to benefits under the Act. Consequently, the ALJ awarded Claimant funeral expenses totaling $3,000 USD, minus a credit for the 11,000 New Turkish Lira she received from Employer in 2006. *Id.* at 16. He found Decedent's average weekly wage was $923.08 and awarded Claimant compensation at 50% of that calculation, with equal shares of an additional 16 2/3% to Decedent's daughters until they each reached age eighteen. *Id.* But he denied Decedent's daughters benefits beyond the age of eighteen, finding there is no evidence showing they were enrolled in a university. *Id.* at 15.

On January 3, 2023, Claimant filed a motion for reconsideration, arguing her daughters are entitled to compensation beyond age eighteen because they were enrolled in universities for higher education. She also sought additional compensation under 33 U.S.C. §914(e) and interest. The ALJ issued an Order Denying Reconsideration and Addressing Other Motions (Recon. Order) on April 26, 2023, denying Claimant's requests. Specifically, the ALJ found Claimant did not point to any evidence establishing her daughters' entitlement to continuing death benefits or additional compensation, despite her reference to CX 17 that she asserted contained certificates of their active enrollment in higher education, stating he was not required to "scour Claimant's 48 exhibits to see if the evidence is in there somewhere." Recon. Order at 3 (quoting D&O at 15, n.19). Further, he stated that even if he had considered this exhibit, the evidence did not explain whether

[3] The United Nations, as represented by the United Nations Office of Project Services (UNOPS) and USAID, entered into a grant agreement to construct eight provincial roads in Afghanistan, including the road from Farah to the Ring Road, under the Rehabilitation of Economic Facilities and Services (REFS) Program. CX 43; EXs 12, 14 at 5. Subsequently, UNOPS and Employer entered into an agreement on May 18, 2005, for Employer to reconstruct the Farah to Ring Road highway. EX 1. USAID paid the Louis Berger Group (LBG), Employer's contractor, for its architecture and engineering services for the Farah to Ring Road project. EX 14.

Claimant's daughters were enrolled in continuing education. *Id.* He also denied Claimant's request for Section 14(e) compensation and interest because she failed to establish entitlement to it.[4]

Employer appeals the ALJ's D&O, and Claimant cross-appeals the ALJ's D&O and Recon. Order. On appeal, Employer asserts the ALJ erred in finding the claim is covered by the DBA under Section 1(a)(5), is timely filed, and is not barred under the DBA by the Release Letter. It also asserts he erred in not crediting it for payments it already made to Claimant. BRB No. 23-0317. In her cross-appeal, Claimant contends the ALJ erred by declining to extend death benefits to Decedent's daughters beyond their eighteenth birthdays due to their enrollment in accredited universities. BRB No. 23-0317A. The Director, Office of Workers' Compensation Programs (Director) responds to both appeals, arguing the case should be remanded for the ALJ to determine if USAID approved the work contract under which Decedent worked and to determine if Claimant's daughters were enrolled in universities that meet the requirements of 33 U.S.C. §902(18).[5] Claimant and Employer each filed reply briefs. We address Employer's appeal first.

Employer's Appeal

1. Coverage Under Section 1(a)(5)

Employer contends the ALJ erred in finding the DBA covers Claimant's claim. It asserts the ALJ erred when applying Section 1(a)(5) because he did not consider whether USAID approved the Employment Agreement between Employer and Decedent.[6] Employer also contends the ALJ erred because the Employment Agreement omits a

[4] The ALJ also denied Claimant's other motions which are irrelevant to this appeal. Recon. Order at 4-5.

[5] The Director urges the Board to affirm the ALJ's findings that: 1) USAID financed the work contract; 2) the absence in the work contract of a DBA security or insurance clause does not preclude DBA coverage; 3) the claim was timely filed; and 4) the 2006 Release Letter does not bar the claim under the DBA. In addition, the Director asserts the Board should deny Employer's request for a credit for payments it already made to Claimant.

[6] In its statement of issues, Employer contends the ALJ erred because "there is no finding in the Order that the United States or a United States agency 'approved' the employment agreement between Employer and the employee, or the contract between United Nations Office of Project Services, the contracting agency, and Employer, and the record lacks evidence of any approval by the United States or a United States agency." Emp. Brief at vi.

financial security clause mandated by Section 1(a)(5) and in finding USAID financed the Farah to Ring Road Contract. The Director agrees only on the issue of "approval" of the employment agreement between Employer and Decedent, stating the ALJ erred in failing to address that prong of the DBA.

Section 1(a)(5) provides in pertinent part that the DBA applies to an "employee engaged in any employment:"

> Under a contract *approved and financed* by the United States or any executive department, independent establishment, or agency thereof…where such contract is to be performed outside of the continental United States, under the Mutual Security Act of 1954, as amended…and not otherwise within the coverage of this section, and every such contract shall contain provisions requiring that the contractor…(A) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (B) shall maintain in full force and effect during the term of such contract…, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits…

42 U.S.C. §1651(a)(5) (emphasis added).[7] Section 1(a)(5) requires an employee's employment be "under a contract approved and financed by the United States," or any agency thereof. *Lui*, 57 BRBS at 4; *Delgado v. Air Service Int'l*, 47 BRBS 39, 42-43 (2013); *Tisdale v. American Logistics Services*, 44 BRBS 29, 32 (2010).

In this case, the ALJ focused his analysis on whether the United States financed Decedent's employment with Employer. Relying primarily on Employer's evidence consisting of an affidavit from Louis Berger Group's Program Manager, Clay Semchyshyn, he determined USAID entered into an agreement with UNOPS to fund the Providential Roads Program including the Farah to Ring Road Project under which Decedent's work was done. D&O at 12-13. In his affidavit, Mr. Semchyshyn stated:

> In order to expedite the construction of these key highways, USAID entered into a grant agreement with UNOPS to construct the eight Provincial Roads that had been cut from the REFS Program on the condition that LBG act as

[7] Reference to the Mutual Security Act of 1954 in Section 1(a)(5) is treated as a reference to its successor, the Foreign Assistance Act of 1961, 22 U.S.C. §2151 *et seq. See Lui v. American Univ. of Afg.*, 57 BRBS 1 (2020). Employer does not contest that the contract was performed under the Foreign Assistance Act of 1961.

> the architect and engineer for these contracts and that LBG's services were to be paid directly by USAID under their REFS agreement with LBG.

EX 14 at 5.[8] Although Employer argues UNOPS funded the contracts, its own evidence indicates USAID provided funding for the Provincial Roads project. Further, Employer's evidence establishes this was the same project it hired Decedent to work on. EXs 1, 2. As USAID financed the project on the condition that LBG act as the architect and engineer for the contracts, this evidence also indicates USAID's financing gave it some control over the project. Funding in this manner is sufficient to constitute financing under Section 1(a)(5). *Delgado*, 47 BRBS at 42; *see Ross v. DynCorp*, 362 F. Supp. 2d. 344, 257 (D.C. Cir. 2005) (contracts partially funded by a United States agency fulfill the "financing" prong of Section 1(a)(5) if the other prongs are not in contention). Accordingly, the ALJ permissibly found Mr. Semchyshyn's affidavit established Decedent's work was financed by the United States. Thus, we reject Employer's argument to the contrary.

However, as both Employer and Director point out, the ALJ failed to address whether the contract under which Decedent worked was approved by USAID. Section 1(a)(5) covers employment "[u]nder a contract *approved* and financed by the United States or any executive department, independent establishment, or agency thereof…." 42 U.S.C. §1651(a) (emphasis added); *Lui*, 57 BRBS at 4; *Delgado*, 47 BRBS at 43. While Section 1(a)(5) does not specify how a contract must be "approved" and does not require the government to explicitly approve the contract, for a worker's injury to be covered under Section 1(a)(5), the ALJ must determine whether there was approval, as that is necessary in conjunction with the funding requirement and is not an alternative to the funding requirement. *Lui*, 57 BRBS at 4-5. Because the ALJ did not do so, his coverage analysis is incomplete. Therefore, we vacate the ALJ's coverage finding and award of benefits and remand the case for him to fully consider whether the contract under which Decedent was employed was "approved…by the United States."

Employer also contends Decedent's Employment Agreement is not covered under Section 1(a)(5) of the DBA because there is no insurance clause in the contract. In

[8] While the ALJ principally relied on Mr. Semchyshyn's affidavit, he also accorded minimal weight to Claimant's evidence, including a February 14, 2006 letter from USAID Administrator Frederick W. Schieck to the Turkish ambassador offering condolences following Decedent's death, Decedent's work visa application, a REFS Summary, an Incident Report, and a letter from James S. Myers of LBG to Employer dated March 1, 2006. Although the ALJ found Claimant's evidence was hearsay, he acknowledged it was consistent with her assertion that Decedent died on a USAID-funded project. D&O at 9-12.

accordance with Board precedent, we reject this contention. *Delgado*, 47 BRBS at 43-44. Only the Secretary of Labor's affirmative actions may waive DBA coverage for employment that otherwise would be covered. *Id.*; *see Duvall v. Mi-Tech, Inc.*, 56 BRBS 1, 4-5 (2022) (applying *Delgado* to claims arising under Section 1(a)(4) which uses the same security or insurance language as Section 1(a)(5) and holding coverage cannot be defeated by the absence of a security or insurance provision in the agreement). Neither a federal agency contracting officer, nor an employer, can circumvent DBA coverage by simply omitting a security or insurance clause from its legal agreement. *See generally Texas v. United States*, 497 F.3d 491, 503 (5th Cir. 2007) ("It stands to reason that when Congress has made an explicit delegation of authority to an agency, Congress did not intend to delegate additional authority *sub silencio*.")[9]

For the sake of judicial efficiency, in the event the ALJ finds the Section 1(a)(5) requirement for agency approval has been met in this case, and the claim is covered, we address the remaining issues on appeal.

2. Compromise and Release Letter

Employer contends the ALJ erred in holding Claimant's claim is not barred by the Release Letter agreement.[10] Premising its assertion based on the position that the claim does not arise under the Act, Employer asserts the Release Letter constitutes a contractual agreement or settlement which precludes Claimant from filing a death-related suit against it and the contract should be upheld.[11] It argues Claimant was aware she was releasing it

[9] Employer suggests the Board's decision in *Delgado* violates the rule of lenity. As the Director indicates, this argument is without merit because Section 1(a)(5) does not impose a penalty which would necessitate the rule of lenity's application. *See Bittner v. United States*, 598 U.S. 85, 100 (2022).

[10] As the ALJ found, if the claim is not covered by the DBA, then it would be precluded on grounds unrelated to the Release Letter. D&O at 5

[11] In exchange for $100,000 USD, the Release Letter specifically states:

> We have no other claim in whatever means from [Employer] and/or third parties.
>
> We represent, accept and undertake that we have not opened a law suit (sic) and will not file a law suit (sic) for the purposes of this event [Decedent's death],

from any claims related to Decedent's death when she signed the letter; the agreement conforms to other court interpretations of the DBA holding releases do not require forfeiture of DBA benefits but still waive claimants' rights to sue; and the lack of forfeiture permits enforcement of the agreement despite 33 U.S.C. §915(b).[12] The Director asserts the Release Letter does not mention the DBA and as it was not approved by the district director or the ALJ in compliance with the Act, it cannot preclude Employer's liability under the DBA.

To the extent Employer perceives the ALJ as having nullified its agreement with Claimant,[13] Employer is incorrect. It is still a valid contract, unaffected by the DBA, its terms, and the ALJ's decision.

Despite its validity, the contract does not serve the purpose Employer apparently intended as it does not preclude Claimant's claim under the DBA. First, Employer appears to presume a claim under the DBA is a "lawsuit" related to Decedent's death – it is not. Rather, it is a statutory claim under an administrative scheme. 33 U.S.C. §§904(b), 905(a); 42 U.S.C. §1651(a), (c).[14] Consequently, the agreement not to sue does not preclude this statutorily sanctioned claim. Additionally, it does not constitute a settlement under the Act.

> and that we irrevocably RELEASE [Employer] and/or third parties in this regard.

EX 10.

[12] 33 U.S.C. §915(b) states: "No agreement by an employee to waive his right to compensation under this chapter shall be valid."

[13] Employer asserts: "33 U.S.C. §915(b) does not invalidate the Settlement Agreement and the Board should enforce the terms here." Emp. Brief at 17.

[14] Section 4(a) of the Longshore Act states in part: "Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908, and 909 of this title." 33 U.S.C. §904(a). Section 4(b) provides: "Compensation shall be payable irrespective of fault as a cause for the injury." 33 U.S.C. §904(b). Section 5(a) declares: "The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death…." 33 U.S.C. §905(b). Section 1(a) of the DBA states: "Except as herein modified, the provisions of the Longshore and Harbor Workers'

Settlements under both the Longshore Act and the DBA are governed by Section 8(i), 33 U.S.C. §908(i) – an exception to Section 15(b) – which states, "no agreement by an employee to waive his right to compensation under the Act [or the DBA] shall be valid." 33 U.S.C. §915(b). Settlement agreements must comply with the requirements in 20 C.F.R. §§202.241-702.243. *Nelson v. American Dredging Co.*, 143 F.3d 789, 793 (3rd Cir. 1998). Further, settlement applications must contain "a full description of the terms of the settlement which clearly indicates, where appropriate, the amounts to be paid for compensation, medical benefits, survivor benefits, and representative's fees" and must be submitted to either a district director or an ALJ for approval. 20 C.F.R. §§702.242(b)(1), 702.243(a).

In his decision, the ALJ determined the Release Letter is not a proper settlement because it made no express reference to the DBA or to Claimant's rights under the statute. D&O at 5. The ALJ's finding is supported by substantial evidence. The Release Letter references the "material" and "immaterial" compensation paid to Claimant and her daughters following Decedent's death. EX 10 at 1. It makes no reference to survivor's benefits or the DBA. Further, the Release Letter does not contain all the elements necessary for a settlement application, and it was not submitted to or approved by the district director or the ALJ as Section 8(i)(1) requires. *See Hensen v. Arcwel Corp.*, 27 BRBS 212, 217 (1993) (filing a compromise and release does not constitute an application for a Section 8(i) settlement if it does not satisfy the requirements of the regulations and is not submitted in accordance with Section 8(i)). Thus, the Release Letter does not constitute a proper Section 8(i) settlement or, therefore, an exception to Section 15(b), and does not preclude Claimant's claim under the Act. *Newton-Sealey v. ArmorGroup Services (Jersey), Ltd.*, 49 BRBS 17, 25 (2015), *aff'd sub. nom. G4S International Employment Services (Jersey) v. Newton-Sealey*, 975 F.3d 182 (2d Cir. 2020).[15]

3. Timeliness

Employer also contends the ALJ erred in ruling Claimant's claim was timely filed. It argues Claimant waited more than ten years after Decedent's death to file the claim, despite having knowledge of his death no later than March 2006 when Employer informed

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Compensation Act, approved March 4, 1927 (44 Stat. 1424), as amended, shall apply in respect to the injury or death of any employee engaged in any employment…." Section 1(c) deems the employer's liability under the DBA "exclusive and in place of all other liability…." 42 U.S.C. §1651(a), (c).

[15] Whether Employer has recourse against Claimant pursuant to the terms of the settlement agreement is beyond our authority to decide.

her of his death. Employer asserts this violates Section 13(a) of the Act, 33 U.S.C. §913(a), and the ALJ's finding should be reversed.

Under Section 13(a), a DBA claim is time barred unless it is filed within one year after the injury or death for which compensation is sought. 33 U.S.C. §913(a). However, Section 20(b), 33 U.S.C. §920(b), carries a presumption that a claim was timely filed unless evidence exists to the contrary. Moreover, under Section 30, the Section 13 statute of limitations is tolled when an employer has knowledge of an employee's injury or death but fails to file a report of injury. 33 U.S.C. §930(a), (f). Thus, an employer must establish compliance with Section 30 to rebut Claimant's Section 20(b) presumption that her claim was timely filed and to prevail under Section 13(a). *Fortier v. Gen. Dynamics Corp.*, 15 BRBS 4, 7 (1982), *aff'd mem.*, 729 F.2d 1441 (2d Cir. 1983).

In his decision, the ALJ determined Claimant knew of Decedent's death no later than October 20, 2006, when she signed the Release Letter, but waited until January 5, 2017, to file her DBA claim. D&O at 4. However, he also found Employer failed to file the required Section 30(a) report. *Id.* Consequently, the ALJ concluded Claimant's claim was not time-barred. Substantial evidence in the record supports the ALJ's conclusions. While Claimant did not file her claim until January 5, 2017, CX 23, Employer proffered no evidence indicating it filed the required report under Section 30(a). Moreover, an Employer is not excused from filing the required report under Section 30(a) by contending the claim does not arise under the DBA. *See Everett v. Spear*, 25 BRBS 132, 136 (1991). Therefore, the time for filing the claim was tolled, and we reject Employer's assertion of error and affirm the ALJ's finding that Claimant's claim was timely filed.[16]

Claimant's Cross-Appeal

Again, for the sake of judicial efficiency, we also address Claimant's cross-appeal. Both Claimant and the Director contend the ALJ erred in denying benefits for her daughters through age twenty-three. Claimant argues the ALJ erred by not considering the submitted evidence showing her daughters were enrolled in continuing education after they turned eighteen because he found Claimant failed to provide a pinpoint cite to the exhibit proving their enrollment. Specifically, Claimant asserts she made this claim in her trial briefing

[16] Employer asserts that if the ALJ's decision is affirmed and Decedent's death is covered, the ALJ erred by not determining the specific amount it should be credited for what it paid Claimant already and identifying the amounts it paid for various purposes. As this issue was not raised below, Employer may not do so for the first time now on appeal. *See Del Monte Fresh Produce v. Director, OWCP*, 563 F.3d 1216, 1222-1223 (11th Cir. 2009).

and submitted CX 17 as evidence. She argues the ALJ erred in admitting he did not consider her evidence and that even if he had considered it, he would have found it contained no declaration or affidavit to explain what conclusions should be drawn from it. The Director requests the Board vacate the ALJ's decision and remand the case for him to consider Claimant's evidence.

Under Section 9(b), in claims for death benefits, a surviving spouse is entitled to 50% of the decedent's average weekly wage and any surviving minor children share an additional 16 2/3% of the decedent's average weekly wage in equal parts, with the total payable amount not to exceed 66 2/3% of the decedent's average weekly wage. 33 U.S.C. §909(b). Further, the Longshore Act, and by extension the DBA, defines a child as either "a person who is under eighteen years of age" or who is over eighteen but is a "student" as defined by Section 2(18) of the Act.[17] 33 U.S.C. §§902(14); 902(18). Section 2(18) of the Act provides:

> The term "student" means a person regularly pursuing a full-time course of study or training at an institution which is–
>
> > (A) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof,
> >
> > (B) a school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body,
> >
> > (C) a school or college or university not so accredited but whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, or
> >
> > (D) an additional type of educational or training institution as defined by the Secretary . . .
>
> But not after he reaches the age of twenty-three or has completed four years of education beyond the high school level….

[17] Both parties stipulate Decedent is survived by a widow – Claimant – and two daughters under Section 2(14). AJX 1 at 2.

33 U.S.C. §902(18)(A)-(D).

The ALJ determined Claimant presented no evidence to support her contention that her daughters were "students" under Section 2(18). D&O at 14-15. He stated he did not "[scour] Claimant's 48 exhibits to see if the evidence is in there somewhere, as it is Claimant's obligation to identify the evidence she relies upon." *Id.* at 15, n.19. In his Recon. Order, the ALJ stated Claimant's closing brief made no reference to CX 17 or any other evidence to establish her children were "students" as the Act requires. Recon. Order at 2-3. He concluded CX 17 in and of itself does not establish whether either of Claimant's daughters was enrolled at a university. *Id.* at 3.

As a preliminary matter, while an ALJ is not bound to comply with the formal rules of evidence, the Administrative Procedure Act (APA) requires "all [agency] decisions…shall include a statement of…findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record…." 5 U.S.C. §557(c)(3)(A). An ALJ's failure to independently analyze and discuss evidence violates the APA's requirement for a reasonable analysis. *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61, 62-63 (1985); *Betz v. Arthur Snowden Co.*, 14 BRBS 805, 807 (1980). In his decision, the ALJ's commentary in footnote 19 amounts to an admission that he did not consider Claimant's submitted evidence before reaching his determination – merely because she did not highlight it in her brief. While ALJ's are not required to "scour the record," they are required to consider all relevant law and evidence needed to reach their determinations. *Ballesteros v. Williamette W. Corp.*, 20 BRBS 184, 187 (1988). Therefore, we agree with Claimant and the Director that further consideration is warranted.

Accordingly, we vacate the ALJ's award of benefits and remand the case for him to determine whether Decedent worked under a contract approved by the United States, or an agency thereof (USAID), as Section 1(a)(5) requires, and, if so, whether Claimant's daughters were students within the meaning of the Act so that they would be entitled to benefits beyond their eighteenth birthdays. In all other respects, we affirm the ALJ's

Decision & Order Awarding Benefits and Order Denying Reconsideration and Addressing Other Motions.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge