

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 03-2006]

Delegation of Authority and Assignment of Responsibility to the Benefits Review Board

1. Purpose

To delegate authority and assign responsibility to the Benefits Review Board, define its composition, and describe its functions.

2. Background

The Benefits Review Board (hereinafter referred to as the "Board" or "BRB") has been given by statute and regulation the authority and responsibility to decide certain appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims for compensation or benefits under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 921), and its extensions, as well as pneumoconiosis disability and death claims under the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969 as amended (30 U.S.C. 932(a)). Provision is made under the statute, for judicial review of final orders of the Benefits Review Board in the United States Courts of Appeals. Pursuant to a statutory amendment to Section 21 of the Longshoremen's and Harbor Workers' Compensation Act, the Secretary was required to create the Board in Secretary's Order 38-72, which delegated authority and assigned responsibilities to the Board. A later statutory amendment made other organizational and structural changes, including renaming the act to the "Longshore and Harbor Workers' Compensation Act." This Secretary's Order delegates authority and assigns responsibility to the BRB with certain modifications to Secretary's Order 38-72. Specifically, this Order: (1) Increases the total membership of the Board from three Members to five Members consistent with statutory authority; and (2) codifies the location of the BRB in the Department's organizational structure, consistent with regulatory authority.

3. Directives Affected

Secretary's Order 38-72, establishing the Benefits Review Board, is hereby canceled.

4. Delegation of Authority and Assignment of Responsibilities

As prescribed by statute, the Board has been delegated authority and

assigned responsibility to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims for compensation or benefits arising under:

A. The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.* as amended;

B. The Defense Base Act, 42 U.S.C. 1651 *et seq.*;

C. The District of Columbia Workmen's Compensation Act, 36 D.C. Code 501 *et seq.*;

D. The Outer Continental Shelf Lands Act, 43 U.S.C. 1331;

E. The Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171 *et seq.*;

F. Title IV, Section 415 and Part C, of the Federal Mine Health and Safety Act of 1977, Public Law 95-164, 91 Stat. 1290 (formerly the Federal Coal Mine Health and Safety Act, hereinafter, FCMHSA, of 1969), as amended by the Black Lung Benefits Act Reform Act of 1977, Public Law 92-239, 92 Stat. 95, the Black Lung Benefits Revenue Act of 1977, Public Law 95-227, 92 Stat. 11, and the Black Lung Benefits Amendments of 1981, Public Law 97-119, 95 Stat. 1643 (30 U.S.C. 901 *et seq.*).

G. Any laws or regulations subsequently enacted or promulgated that provide for final decisions by the BRB upon appeal or review of decisions, as directed by the Secretary, which are similar to those listed under paragraph 4.A. through 4.F. of this section.

5. Composition, Panel Configuration, and Voting

As prescribed by statute:

A. The Board shall consist of five permanent Members, one of whom shall be designated Chair. The Members of the Board shall be appointed by the Secretary of Labor, and shall be especially qualified to serve on such Board. The Chair shall have the authority as chief administrative officer, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board. The four remaining permanent Members shall be the Associate Members of the Board. Each permanent Member shall serve an indefinite term subject to the discretion of the Secretary.

B. For the purpose of carrying out Board functions, three Members of the Board shall constitute a quorum and official action can be taken only on the affirmative vote of at least three Members.

C. Notwithstanding paragraph 5.(A) and (B), upon application of the Chair of the Board, the Secretary may

designate up to four Department of Labor administrative law judges to serve on the Board as temporary Members, for not more than one year.

D. The Board is authorized to delegate to panels of three Members any or all of the powers which the Board may exercise. Each such panel shall have no more than one temporary Member. Two Members shall constitute a quorum of a panel. Official adjudicative action may be taken only on the affirmative vote of at least two Members of a panel. Any party aggrieved by a decision of a panel of the Board may, within thirty days after the date of entry of the decision, petition the entire permanent Board for review of the panel's decision. Upon affirmative vote of the majority of the permanent Members of the Board sitting *en banc*, the petition shall be granted. Notwithstanding this paragraph, *en banc* action is not available in cases arising under the District of Columbia Workmen's Compensation Act.

6. Organizational Placement

As prescribed by the statute, the functions of the Benefits Review Board are quasi-judicial in nature and involve review of decisions made in the course of the administration of the above statutes by the Employment Standards Administration in the Department of Labor. The Board is placed in and shall receive from the Office of the Deputy Secretary necessary funds, personnel, supplies, equipment and records services (20 CFR 801.103).

7. Questions Reviewable; Record; Conclusiveness of Findings; Stay of Payments; Remand

As prescribed by statute:

A. The Board shall be authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees under this Act and the extensions thereof. The Board's orders shall be based upon the hearing record. The findings of fact in the decision under review by the Board shall be conclusive if supported by substantial evidence in the record considered as a whole. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier.

B. The Board may, on its own motion or at the request of the Secretary, remand a case to the administrative law judge for further appropriate action. The consent of the parties in interest shall

not be a prerequisite to a remand by the Board.

8. Time for Appeal to the Board

Notice of appeal must be filed within 30 days of the date the decision or order being appealed from is filed in the office of a district director (20 CFR 701.301(a)(7)). Such notice of appeal shall be in writing and contain the names of the parties, docket or case number, and the date of the decision or order appealed from.

9. Location of Board's Proceedings

The Board shall hold its proceedings in Washington, DC, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

10. Rules and Regulations

The Deputy Secretary may promulgate such rules and regulations as may be necessary or appropriate for effective

operation of the Benefits Review Board as an independent quasi-judicial body in accordance with the provisions of the statute. Procedural rules for performance by the Board of its review functions and for ensuring an adequate record for any judicial review of its orders shall be promulgated by the Benefits Review Board with the approval of the Deputy Secretary. Such rules shall incorporate and implement procedural requirements of section 21(b) of the Longshore and Harbor Workers' Compensation Act, as amended.

11. Departmental Counsel

A. Representation before the Board. On any issues requiring representation of the Secretary, the Director, Office of Workers' Compensation Programs, a district director, or an administrative law judge before the Board, such representation shall be provided by attorneys designated by the Solicitor of

Labor. Representation of all other persons before the Board shall be as provided for by statute or by the rules of practice and procedure promulgated under Paragraph 10 of this Order (20 CFR 801.401).

B. Representation of Board in Court Proceedings. Except in proceedings in the Supreme Court of the United States, any representation of the Benefits Review Board in court proceedings shall be by attorneys provided by the Solicitor of Labor (20 CFR 801.402).

12. Effective Date

This delegation of authority and assignment of responsibility is effective immediately.

Dated: January 18, 2006.

Elaine L. Chao,

Secretary of Labor.

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