



Issue Date: 26 February 2009

CASE NO.: 2008-LHC-00036

OWCP NO.: 07-171960

IN THE MATTER OF

J.C.¹

Claimant

v.

ORMET PRIMARY ALUMINUM CORP.

Employer

DECISION AND ORDER DENYING RECONSIDERATION

On October 15, 2008, the undersigned issued a Decision and Order in this matter, computing the average weekly wage of Claimant to be \$1,369.15. On November 17, 2008, Counsel for Claimant, Charles C. Bourque, Jr., Esq., filed a Fee Petition requesting for himself 63.5 compensable hours at \$200.00 per hour, 2.0 compensable hours at \$150.00 per hour for services provided by his associate, Melanie Legarde, Esq., and \$1,059.18 in reimbursable expenses, for a total of \$14,059.18. While the Fee Petition was received by the undersigned, it was not received by Counsel for Employer, Paul C. Miniclier, Esq., until December 15, 2008. After a delay authorized by the undersigned, Employer filed a Memorandum in Opposition to Fee Application on January 20, 2009.

On January 28, 2009, the undersigned issued a Decision and Order Denying Attorney's Fees to Claimant's Counsel based on Section 28(b) of the Act. The undersigned determined that numerous hours requested by Claimant's Counsel were for actions not brought at the ALJ level. Further, the undersigned determined that Claimant had an average weekly wage less than Employer was using to calculate benefits. Employer tendered a payment that was greater than Claimant was awarded at the ALJ level. Further, the undersigned found that Claimant did not receive additional compensation through the services of an attorney that was greater than the amount voluntarily tendered by Employer. Therefore, under Section 28(b), the undersigned found that a claim for legal services cannot be assessed against Employer, as no greater

¹ Pursuant to a policy decision of the Department of Labor, the Claimant's initials rather than full name are used to limit the impact of the Internet posting of agency adjudicatory decisions for benefit claim programs.

compensation was ever received after the informal conference and that Claimant has not satisfied its burden under Section 28(b) for Counsel for Claimant to obtain legal fees in this matter.

On February 10, 2009, Counsel for Claimant filed a Petition for Reconsideration, contending that Counsel is entitled to a fee for the significant time and effort expended in fighting to prevent Employer from reducing the average weekly wage paid to Claimant. On February 17, 2009, Employer filed an Opposition to Petition for Reconsideration, contending that no grounds for reconsideration had been shown to warrant reconsideration of the undersigned's decision.

A motion for reconsideration is designed to correct factual errors. It is not a tool to be employed to induce a fact-finder to change his mind and it is not a means of correcting an error of law. Errors of law are corrected through the normal and prescribed appeal process. *Alerted v. Monsanto, Co.*, 671 F.2d 908, 912 (5th Cir. 1982). A motion for reconsideration serves a limited purpose. On reconsideration, a party may not introduce new evidence or legal theories which could have been presented earlier. Reconsideration is appropriate when a fact-finder misunderstood a party or has made an error, not of reasoning, but of apprehension. *Flowers v. Goldman, Sachs, & Co.*, 865 F.Supp 453 (N.D. Ill. 1994).

In this case, Counsel for Claimant has not provided any precedent for which the undersigned should reconsider the January 29, 2009 decision. Counsel has not provided any evidence or argument that would permit allowance of attorney fees under Section 28(b). Further, the undersigned is not compelled by Counsel's argument regarding Claimant's trouble in obtaining representation in the future as Section 28(c) allows for attorney fees to be paid by Claimant in certain situations. Based on the facts and argument, the undersigned finds that reconsideration is not warranted in this matter.

ORDER

IT IS HEREBY ORDERED that Claimant's Petition for Reconsideration is **DENIED**.

A

CLEMENT J. KENNINGTON
Administrative Law Judge