BROWNSTEIN | RASK LLP
UMPQUA BANK PLAZA
1 SW COLUMBIA STREET // SUITE 900
PORTLAND, OR 97204
P 503.221.1074 F 503-221-1772

Norman Cole
D: 503.412.6726
C: 971-235-9817
F: 503-221-1074
ncole@brownsteinrask.com

QUARTERLY SUMMARY: LONGSHORE & HARBOR WORKERS' COMPENSATION ACT CASELAW

Decisions published in LEXIS through September 1, 2026;
Decisions posted by BRB at https://www.dol.gov/brb/decisions.htm:
published through 03/20/2026; unpublished through 06/30/2026
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Attorney Fees – Amount

ALJ did not adequately explain fee decision. *Cordero v. Constellis Group*, 2026 DOLBRB LEXIS 226 (BRB 24-0393, 6/16/26) (unpublished).

> Claimant's attorney contended the relevant market for their services was either a national market or South Florida and sought rates of $550 and $500 for attorneys and $200 for a legal assistant. Attorneys submitted unsworn declarations, cited the 2023 Real Rate Report, and attorney fee awards in other Longshore, DBA, and Black Lung Benefits Act cases. Employer filed objections to the rates and to specific entries. The ALJ reduced attorney rates $100 but otherwise rejected employer's objections. Claimant appealed. The Board remanded because the ALJ did not discuss or analyze the parties' arguments or the evidence he considered. He did not identify the relevant market, the source or sources from which he obtained average rates, which "fields" he considered "similar," which rates he used for his calculations, or which "other fee awards" he relied on. He considered attorneys' experience but did not explain how experience or other regulatory factors influenced his hourly rate analysis.

Attorney Fees – Entitlement

§28(b) fee denied when claimant successfully argued employer was not entitled to a credit from prior settlements, but ALJ did not award PPD.

Graham v. Dyncorp International, 2026 DOLBRB LEXIS 151 (BRB 24-0249, 4/24/26) (unpublished).

> On March 8, 2018, claimant sustained an injury that aggravated preexisting orthopedic conditions of her knee, back, and body, for which she had previously received §8(i) settlements totaling $110K for disability and $45K for medical services. Employer promptly paid TTD. A dispute arose regarding medical treatment. At the informal conference claimant sought medical benefits for treatment of her back and employer contended it was entitled to a credit for PPD received for knees and low back per prior settlements. The OWCP examiner recommended employer pay medical benefits and observed employer always has a right to claim credit for any amount previously paid toward a specific scheduled injury but was unable to recommend a *Nash* credit because there was no evidence of a prior impairment rating or any indication how much was allocated for scheduled injuries. Employer rejected the recommendation and did not authorize the requested medical benefits. On September 21, 2018, the case was transferred to the OALJ level, and on November 12, 2018 employer terminated payment of TTD, contending the work related condition had reached MMI and claimant had been released to return to work. At the hearing claimant sought additional TTD, and employer again requested a credit. The ALJ held employer was not entitled to a credit, but neither was claimant entitled to any disability after November 12, 2018. The ALJ denied claimant's application for fees and costs because §28(a) did not apply, and under §28(b), the issues on which claimant was successful were not discussed at the informal conference and were not the subject of a written recommendation. Separately, the district director denied a request for attorney fees and costs because claimant's attorneys were not successful in obtaining any benefits after the controversion. The Board affirmed, but for different reasons, based on 5th Circuit caselaw. There was an informal conference, the district director made a written recommendation, and the employer did not accept the recommendation, but claimant's attorney, regarding the credit issue, did not achieve a greater award than the amount employer was willing to pay. The ALJ's finding that a work related aggravation reached MMI with no increased permanent impairment or disability rendered application of a credit moot. Claimant did not achieve a greater award due to any attorney services preventing a reduction of benefits via rejection of a credit. The issue became moot when the ALJ denied PPD.

Causation - §20 Presumption

Proof of injury does not require proof of a specific condition. *Jeffboat, Inc. v. Director, OWCP*, 179 F.4th 559 (7th Cir. 2026).

Claimant's expert, Dr, Gupta, testified claimant's workplace exposures to paint and sandblasting caused emphysema and contributed to his resulting disability. Employer's expert, Dr. Frazier, conceded long term unprotected exposure to certain types of paint, antifreeze, and sandblasting material could cause lung disease, but because he found no evidence claimant had COPD, restrictive pulmonary disease, or pulmonary fibrosis, he did not offer an opinion on disease causation. The ALJ held claimant invoked the §20(a) presumption and employer rebutted the presumption. When weighing the evidence he found Dr. Gupta's opinion more persuasive and awarded permanent disability and medical expenses. The Board affirmed. On appeal employer raised several arguments that failed, including a contention that claimant failed to prove he had a specific work related condition. The Act requires claimant to show disability resulting from an injury. "Injury" under the Act refers to *any* physical harm, *i.e.*, that something has gone wrong with the human frame. It as enough that claimant suffered some sort of problems with his lung, regardless of the label.

Employer did not rebut §20(a) presumption. *Passalaqua v. Bath Iron Works Corporation*, 2026 DOLBRB LEXIS 221 (BRB 24-0338, 6/9/26) (unpublished).

Claimant sought PTD and medical benefits for injuries to shoulders, wrists, low back, feet and lungs. Employer controverted. ALJ denied PTD, concluding claimant invoked the §20(a), presumption, employer rebutted it, and claimant failed to prove his case by a preponderance of the evidence. On appeal claimant contended employer did not rebut the presumption. The Board agreed.

Employer's expert said the diagnosis regarding lungs was unclear, as he had not seen pulmonary function studies, x-rays, CT scans, or MRI's of lungs or any occupational documentation of respiratory clearance questionnaires, serial pulmonary function tests, or detailed documentation of ongoing exposures. It was unclear what his exposures were. He was concerned part of the lung problem had a cardiac source. "Therefore, at this juncture, I cannot attribute his lung condition to work exposure due to lack of workup and investigation to be causally linked to his work exposure or activities. This would need to be further investigated and defined to establish a causal link or to eliminate a causal link to his work." The expert did not opine claimant's pulmonary condition was not caused by employment, nor did he opine the cardiac condition was likely the sole source of claimant's respiratory symptoms. He said he could not reach any causal connection conclusion whatsoever. This was insufficient to rebut the presumption.

Hearings - Evidence

Medical opinion that was insufficient to rebut §20 presumption was insufficient to prove no disability. *Kjushterov v. Global Integrated Security*, 2026 DOLBRB LEXIS 81 (BRB 24-0340, 05/15/26) (unpublished).

> ALJ found claimant had a work related psychological injury as a matter of law because Dr. Hervey, a neuropsychologist retained by the employer, failed to provide opinions sufficient to rebut the §20(a) presumption. He then gave great weight to Dr. Harvey's opinion that claimant can return to usual employment because he has no condition and held claimant was not entitled to disability benefits. Claimant appealed. The Board held the ALJ's finding was not rational. Dr. Harvey's opinion that claimant had no work restrictions rests on the erroneous premise that claimant does not have a work related injury. It cannot be the basis for concluding claimant did not establish a prima facie case of total disability. The Board remanded with instructions to reconsider claimant's credibility and treatment record, disregarding Dr. Harvey's unsupported opinon, to determine if claimant has any limitations that affect his ability to return to usual and customary employment and then compare those imitations with the requirements of his usual employment.

Hearings – Other

Remand to District Director with instructions to make ministerial calculations appropriate. *Miyashiro v. Command Navy Installations Command and Contract Claims Services, Inc.*, 60 BRBS 111 (BRB 24-0372, 6/26/26) (unpublished).

> After awarding compensation the ALJ gave employer thirty days to supplement the record with evidence of the exact amount paid to claimant for TTD from January to July, 2020, a period when employer simultaneously paid sick leave to claimant. The ALJ instructed the district director to make the necessary calculations to effectuate his order. On appeal, claimant objected to assigning that task to the district director. The board held remand was proper. The district director may make ministerial calculations to effectuate a compensation order and provided explicit directives to do so.

Maximum Medical Improvement

MMI based on disabling conditions rather than non-disabling conditions. *Carroll v. Virginia International Terminals LLC,* 2026 DOLBRB LEXIS 150 (BRB 24-0276 (BRB 4/15/26) (unpublished).

On May 10, 2017 claimant injured his cervical spine. Dr. Wardell reported he reached maximum medical improvement and could return to light duty work after May 12, 2019. Dr. Skidmore examined claimant on June 16, 2020 and recommended a CT myelogram before concluding he was at maximum medical improvement. On September 2, 2020 Dr. Wardell opined claimant was permanently and totally disabled from all waterfront work. On November 3, 2020 PA Ratanataya recommended mental health referral. On December 17, 2020 psychiatrist, Dr. Dabney, diagnosed adjustment disorder with mixed anxiety and depressed mood related to the injury and recommended three months of medication with supportive therapy but also said there were no work restrictions from the psychiatric diagnosis. Employer paid PPD rather than TTD from May 10, 2019. The ALJ concluded entitlement to TTD ended on May 10, 2019.

The Board held there was substantial evidence the neck condition was at maximum medical improvement on May 10, 2019. The psychological condition had no effect on claimant's ability to earn wages. Citing *Misho v. Global Linguist Solutions,* 48 BRBS 13, 15-16 (2014), which held where a claimant established an inability to perform usual work due to only one of several work related conditions, rather than a combination of work related injuries, the nature of the disabling condition governed the award of benefits, the Board held the date when the neck condition reached MMI, rather the date when the psychological condition was at MMI, determined the date of MMI.

Medical Services – Other

Medical expenses are payable as cost of litigation per §28(d) or as medical expense per §7. District Director did not properly evaluate the request under §28(d). *Andrade v. Electric Boat Corporation*, 2026 DOLBRB LEXIS 160 (BRB 24-0359, 5/8/26) (unpublished).

§28(d) states when a fee is awarded against an employer or carrier there may be assessed against such employer or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of the claimant. Claimant filed a claim for hand and arm injuries. Employer controverted. At the request of claimant's attorney, Dr. Willetts examined claimant and provided a report finding 2% impairment of each hand. Employer paid compensation consistent with this report. The District Director approved an agreed fee, per §28(a), for $4,150.00 but did not award costs. Claimant's attorney subsequently requested an order, per §28(d) for reimbursement of $750.00 paid to Dr. Willetts for the examination and report as a litigation

cost and not a medical expense. The District Director concluded the fee was a medical expense that claimant did not pay out of pocket and therefore could not be recovered under §28(a).

The Board held the district director's order "cannot be affirmed." Depending on the circumstances, a physician's fee can be recovered from an employer as a cost of litigation under §28(d) or as a medical expense under §7. Here, the district director was asked to consider a §28(d) litigation expense but instead addressed whether it was a medical expense under §7. On remand the district director must consider whether the fee agreement and the order approving it resolved employer's liability and therefore Employer cannot be held liable for this cost.

Miscellaneous (§16 Assignment)

Unlawful assignment of compensation per §16 when employer received claimant's TTD checks and claimant endorsed the checks to employer. *Miyashiro v. Command Navy Installations Command and Contract Claims Services, Inc.*, 60 BRBS 111 (BRB 24-0372, 6/26/26) (unpublished).

Self-insured employer's contract with claimant allowed claimant to supplement TTD with accrued sick leave and/or annual leave time, up to an amount not exceeding his basic salary. To receive the additional payments, from May 2019 to January 2020, employer sent claimant's TTD checks to its HR office, rather than to the claimant. There, claimant endorsed the checks to employer. Employer then paid claimant an amount equal to TTD plus the sick/leave time supplement. From January 2020 to July 2020 employer mistakenly sent the TTD checks directly to the claimant, rather than to its HR office, but continued sick/leave supplemental payments. The ALJ awarded TTD from October 21, 2019 but denied employer a credit for TTD payments from May 2019 to January 2020. These payments were not "paid to" claimant and constituted an unlawful assignment per §16. §16 serves to protect a claimant even against his own improvidence or folly by ensuring that all workers' compensation payments go to the claimant. Subsequent payments, when employer sent TTD directly to the claimant, were subject to a credit.

Settlements

New claim for pulmonary problem after prior §8(i) settlement for psychological condition raised question of fact whether new claim was precluded as a consequential condition of a previously claimed and settled condition (versus a condition that was not settled or did not exist at time

of prior settlement). *Trajkovski v. Fluor ConOps, Ltd.*, 2026 DOLBRB LEXIS 220 (BRB 24-0362, 6/3/26) (unpublished).

On February 23, 2022 claimant and employer entered into a §8(i) settlement that "encompasses[ed] the resolution of claimant's psychological conditions and the physical symptoms arising thereof, including any pulmonary or hearing loss claims." A footnote stated $500 was allocated to any pulmonary injury, be it direct injury or sequela of the psychological injury. On September 30, 2022 claimant sought treatment for difficulty breathing and a dry cough. He subsequently filed a claim with the same employer for his respiratory condition arising out of his employment in Afghanistan. Employer filed a motion for summary decision, which the ALJ granted because the terms of the agreement unequivocally and specifically included compensation for a work related pulmonary injury. On appeal, claimant, supported by the Director, argued a factual dispute existed over whether the 2022 claim was "in existence' at the time of the settlement agreement. The Board remanded. An agreement to settle a claim is limited to the rights of parties and claims then in existence. If the language is clear and ambiguous, its meaning must be determined form the four corners of the instrument without resort to extrinsic evidence. Here, the agreement was not clear and unambiguous. It is not clear if it covers any work related pulmonary injury or only pulmonary symptoms arising out of claimant's work related psychological injury claim. The Board instructed the ALJ to determine if the 2022 settlement agreement encompassed claimant's 2022 respiratory injury and whether that injury existed at the time the parties entered into the settlement agreement.