

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-60178

MARIA JORDAN; JACK JORDAN,

Petitioners,

versus

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR;
DYNCORP INTERNATIONAL, L.L.C.;
CONTINENTAL CASUALTY COMPANY,

Respondents.

Petition for Review of an Order of
the Benefits Review Board

(Filed Apr. 16, 2019)

Before SMITH, HIGGINSON, and DUNCAN, Circuit
Judges.

PER CURIAM:

IT IS ORDERED that petitioners' opposed motion
for partial dismissal of the petition for review as to
the disability claim for lack of jurisdiction is DENIED.
IT IS FURTHER ORDERED that the opposed joint

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motion of respondents Continental Casualty Company and DynCorp International, L.L.C., to dismiss the petition for review is GRANTED.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-60178

MARIA JORDAN; JACK JORDAN,

Petitioners,

versus

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,

United States Department of Labor;
DYNCORP INTERNATIONAL, L.L.C.;
CONTINENTAL CASUALTY COMPANY,

Respondents.

Petition for Review of
an Order of
the Benefits Review Board

(Filed May 7, 2019)

Before SMITH, HIGGINSON, and DUNCAN, Circuit
Judges.

PER CURIAM:

IT IS ORDERED that petitioners' opposed motion
to transfer the appeal is DENIED.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-60178

MARIA JORDAN; JACK JORDAN,

Petitioners,

versus

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,

United States Department of Labor;
DYNCORP INTERNATIONAL, L.L.C.;
CONTINENTAL CASUALTY COMPANY,

Respondents.

Petition for Review of an Order of
the Benefits Review Board

(Filed May 24, 2019)

Before SMITH, HIGGINSON, and DUNCAN, Circuit
Judges.

PER CURIAM:

IT IS ORDERED that petitioners' opposed motion
for an opinion is DENIED.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

**LYLE W. CAYCE
CLERK**

**TEL. 504-310-7700
600 S. MAESTRI PLACE,
SUITE 115
NEW ORLEANS, LA 70130**

June 24, 2019

Mr. Jack R. T. Jordan
6225 Northlake Drive
Parkville, MO 64152

No. 19-60178 Maria Jordan, et al v. DOWCP, et al
Agency No. 18-0128
Agency No. 18-0158

Dear Mr. Jordan,

On June 21, 2019, we received petitioners' Petition for Reconsideration by the Panel or by the Court En Banc.

In light of the fact that the time for filing a motion for reconsideration or a petition for rehearing en banc has expired, we will take no action on your Petition for Reconsideration by the Panel or by the Court En Banc (See 5TH CIR. R. 27, and FED. R. APP. P. 35 and 40).

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This case is closed.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Dantrell Johnson
Dantrell L. Johnson,
Deputy Clerk
504-310-7689

cc:

Mr. Ethan D. Balsam
Mr. Jason Matthew Branciforte
Mr. William M. Bush
Mr. Mark A. Reinharter
Ms. Lauren Elliott Wilson

P.S. to Mr. Jordan: For future reference, please be advised that a motion for reconsideration and a petition for rehearing en banc cannot be combined into 1 document. Instead, this Court requires that any motion for reconsideration be filed as its own document; and if necessary, any petition for rehearing en banc be filed as its own document.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No 16-60576

MARIA JORDAN; JACK JORDAN,
Petitioners,

versus

DIRECTOR, Office of Workers' Compensation
Programs, United States Department of Labor;
DYNCORP INTERNATIONAL, L.L.C.;
CONTINENTAL CASUALTY COMPANY,

Respondents.

Petition for Review of an Order of
the Benefits Review Board

(Filed Nov. 18, 2016)

Before JONES, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the opposed joint motion of
respondents DynCorp International, L.L.C., and Conti-
nental Casualty Company to dismiss the petition for
review for lack of jurisdiction is GRANTED.

IT IS FURTHER ORDERED that the opposed
joint motion of respondents DynCorp International,

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L.L.C., and Continental Casualty Company to stay further proceedings pending a determination of appellate review is DENIED as unnecessary.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-60576

MARIA JORDAN; JACK JORDAN,
Petitioners,

versus

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR;
DYNCORP INTERNATIONAL, L.L.C.;
CONTINENTAL CASUALTY COMPANY,

Respondents.

Petition for Review of an Order of
the Benefits Review Board

(Filed Dec. 8, 2016)

Before JONES, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that petitioners' opposed motion for clarification of the order dated November 18, 2016, is DENIED except to note that, as shown by the motion to dismiss, jurisdiction is foreclosed by this court's decision in *Felkner*, which petitioners claim was wrongly

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decided, and additionally, the order complained of is neither final nor appealable.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No 17-60424

MARIA JORDAN,
Petitioner,
versus
DIRECTOR, Office of Workers' Compensation
Programs, United States Department of Labor;
DYNCORP INTERNATIONAL, L.L.C.;
CONTINENTAL CASUALTY COMPANY,
Respondents.

Petition for Review of an Order of
the Benefits Review Board

(Filed Jul. 6, 2017)

Before JONES, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the opposed motion of the private respondents to dismiss the petition for review for want of jurisdiction is GRANTED. The motion for sanctions is DENIED.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-60851

MARIA JORDAN; JACK JORDAN,

Petitioners

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR; DYNCORP INTERNATIONAL, L.L.C.; CONTINENTAL CASUALTY COMPANY,

Respondents

Petition for Review of an Order of the
Benefits Review Board

(Filed Jan. 24, 2018)

Before DENNIS, SOUTHWICK, and HIGGINSON,
Circuit Judges.

PER CURIAM:

IT IS ORDERED that the opposed motion of Respondents, DynCorp International, L.L.C. and Continental Casualty Company to dismiss the petition for review for lack of jurisdiction is GRANTED.

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IT IS FURTHER ORDERED that the opposed motion of Petitioners for the administrative record to include the two emails referenced in Petitioners' motion is DENIED AS MOOT.

IT IS FURTHER ORDERED that the opposed motion of Respondents, DynCorp International, L.L.C. and Continental Casualty Company for sanctions to be imposed on Petitioners is DENIED.

IT IS FURTHER ORDERED that the opposed motion of Respondents, DynCorp International, L.L.C. and Continental Casualty Company for filing restrictions to be imposed on Petitioners and to prohibit them from filing future appeals without leave of court is DENIED.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-60329

MARIA JORDAN; JACK JORDAN

Petitioners – Appellants

v.

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT
OF LABOR; DYNCORP INTERNATIONAL LLC;
CONTINENTAL CASUALTY COMPANY

Respondents – Appellees.

Appeals from the Benefits Review Board of the
United States Department of Labor
BRB No. 2018-0158 (3/6/18 Order) and
2018-0128 (3/6/18 and 4/25/18 Orders)

(Filed Jun. 8, 2018)

Before DAVIS, JONES, and OWEN, Circuit Judges.

PER CURIAM:

This is Petitioners' fourth attempt to seek review of an un-appealable order of the Benefits Review Board (the "BRB") adjudicating a claim arising under

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the Defense Base Act (“DBA”), 42 U.S.C. § 1651 et seq. The law is clear in this Circuit that any appeal in such a case from a final order of the BRB lies with the district court for the district in which the deputy commissioner’s office is located. *See AFIA/CIGNA Worldwide v. Felkner*, 930 F.2d 1111, 1116 (5th Cir. 1991).

Notwithstanding our dismissals of Petitioners’ appeals on November 18, 2016, and December 8, 2016 (*Jordan I*); July 6, 2017 (*Jordan II*); January 24, 2018, March 20, 2018, and April 23, 2018 (*Jordan III*); denials of motions for rehearing en banc on January 24, 2017 (*Jordan I*), and September 13, 2017 (*Jordan II*); denial of a motion for reconsideration on April 23, 2018 (*Jordan III*); and the Supreme Court’s denial of their petition for writ of certiorari (*Jordan II*) on April 23, 2018, Petitioners persist in filing another appeal.

Accordingly, IT IS ORDERED that the opposed motion of DynCorp International, L.L.C., and Continental Casualty Company (“Respondents”) to dismiss petition for review for lack of jurisdiction is GRANTED for two reasons:

- (1) This Court does not have appellate jurisdiction to review final orders from the BRB in this Defense Base Act case, *see Felkner*, 930 F.2d at 1116; and
- (2) The BRB has not issued a final order in any event that would be appealable.

IT IS FURTHER ORDERED that Respondents’ motion for attorney’s fees, costs, and sanctions against

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Petitioners, Maria Jordan and Jack Jordan, is GRANTED as set forth below:

- (1) Respondents are awarded attorneys' fees in the amount of \$10,000, plus costs, for defending this frivolous appeal; and
- (2) Petitioners are hereby enjoined from seeking review in this Court of any order issued by the BRB in this matter without first obtaining leave of court to do so.

IT IS FURTHER ORDERED that Respondents' motion for further sanctions is DENIED.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-60329

MARIA JORDAN; JACK JORDAN,
Petitioners

v.

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT
OF LABOR; DYNCORP INTERNATIONAL, L.L.C.;
CONTINENTAL CASUALTY COMPANY,

Respondents

Petition for Review of an Order of the
Benefits Review Board

(Filed Apr. 15, 2019)

Before DAVIS, JONES, and OWEN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that petitioners' opposed motion
to vacate order regarding sanction is DENIED.

IT IS FURTHER ORDERED that petitioners' op-
posed motion to vacate the judgment is DENIED.

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IT IS FURTHER ORDERED that petitioners' opposed motion to extend time to file a petition for rehearing en banc of the Court's judgment, to and including April 22, 2019, is DENIED.

U.S. Department of Labor Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

[SEAL]

BRB No. 18-0128

MARIA JORDAN,)
Claimant-Petitioner)
v.)
DYNCORP INTERNATIONAL,)
LLC)
Employer-Respondent)
and) DATE ISSUED:
CONTINENTAL CASUALTY) 01/18/2019
COMPANY)
Carrier-Respondent)
DIRECTOR, OFFICE OF)
WORKERS' COMPENSATION)
PROGRAMS, UNITED)
STATES DEPARTMENT)
OF LABOR)
Party-in-Interest) ORDER

Claimant has filed a timely “Motion for Reconsideration and Suggestion for Reconsideration En Banc” of the Board’s Order dismissing her appeal, *Jordan v. DynCorp Int’l, LLC*, BRB No. 18-0128 (Oct. 19, 2018). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant has also filed a “Motion to Disqualify Panel Members and

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Suggestion for En Banc Consideration.” Employer and carrier each responded, urging the Board to deny both motions. Claimant filed several reply briefs.

After consideration of claimant’s contentions and the responses of employer and carrier, no member of the panel has voted to grant claimant’s motion to disqualify panel members, to grant reconsideration en banc or to vacate or modify the Board’s Order of dismissal. Accordingly, claimant’s motions are denied, and the Board’s Order is affirmed. 20 C.F.R. §§801.301(c), 802.409.

By Order of the Board:

Thomas O. Shepherd, Jr.
Clerk of the Appellate Boards

1. 5 U.S.C. 702. Right of review, in pertinent part provides:

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

2. 5 U.S.C. 703. Form and venue of proceeding, in pertinent part provides:

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute.

3. 5 U.S.C. 704. Actions reviewable, in pertinent part provides:

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action.

4. 5 U.S.C. 706. Scope of review, in pertinent part provides:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall –

- (1) compel agency action unlawfully withheld or unreasonably delayed; and

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(2) hold unlawful and set aside agency action, findings, and conclusions found to be –

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (D) without observance of procedure required by law;
- (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
- (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

5. 33 U.S.C. 919 Procedure in respect of claims, in pertinent part provides:

- (c) Investigations; order for hearing; notice; rejection or award. The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereon.

(d) Provisions governing conduct of hearing; administrative law judges. Notwithstanding any other provisions of this chapter, any hearing held under this chapter shall be conducted in accordance with the provisions of section 554 of Title 5. Any such hearing shall be conducted by an administrative law judge qualified under section 3105 of that title. All powers, duties, and responsibilities vested by this chapter, on October 27, 1972, in the deputy commissioners with respect to such hearings shall be vested in such administrative law judges.

6. 33 U.S.C. 920 Presumptions, in pertinent part provides:

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary –

(a) That the claim comes within the provisions of this chapter.

7. In 1927, 33 U.S.C. 921(b) in pertinent part provided:

If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District).

8. As of 1972, 33 U.S.C. 921(b) Benefits Review Board . . . questions reviewable . . . , in pertinent part provides:

(3) 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 chapter and the extensions thereof.

9. As of 1972, 33 U.S.C. § 921(c) Court of appeals; jurisdiction; persons entitled to review; petition . . . , in pertinent part provides:

Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. . . . Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the order of the Board and enforcing same to the extent that such order is affirmed or modified.

10. 33 U.S.C. 923 Procedure before deputy commissioner or Board, in pertinent part provides:

(a) In making an investigation or inquiry or conducting a hearing the deputy commissioner or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure,

except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties.

(b) Hearings before a deputy commissioner or Board shall be open to the public and shall be stenographically reported, and the deputy commissioners or Board, subject to the approval of the Secretary, are authorized to contract for the reporting of such hearings. The Secretary shall by regulation provide for the preparation of a record of the hearings and other proceedings before the deputy commissioners or Board.

11. 33 U.S.C. 939(b) Establishing compensation districts, in pertinent part provides:

Judicial proceedings under sections 918 and 921 of this title in respect of any injury or death occurring on the high seas shall be instituted in the district court within whose territorial jurisdiction is located the office of the deputy commissioner having jurisdiction in respect of such injury or death (or in the United States District Court for the District of Columbia if such office is located in such District).

12. In 1927, 33 U.S.C. 921(b) *in pari materia* with 939(b) (underlined text) would have read:

If not in accordance with law, a compensation order in respect of any injury or death occurring on the high seas may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in

the Federal district court within whose territorial jurisdiction is located the office of the deputy commissioner having jurisdiction in respect of such injury or death (or in the Supreme Court of the District of Columbia if the injury occurred in the District).

13. 42 U.S.C. 1651(a) Places of employment, in pertinent part provides:

Except as herein modified, the provisions of the Longshore and Harbor Workers' 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 [in specified places].

14. 42 U.S.C. 1653(a) Compensation districts; judicial proceedings, in pertinent part provides:

Judicial proceedings provided under sections 18 and 21 of the Longshore and Harbor Workers' Compensation Act in respect to a compensation order made pursuant to this chapter shall be instituted in the United States district court of the judicial district wherein is located the office of the deputy commissioner whose compensation order is involved if his office is located in a judicial district, and if not so located, such judicial proceedings shall be instituted in the judicial district nearest the base at which the injury or death occurs.

15. In 1941, 33 U.S.C. 921(b) *in pari materia* with 42 U.S.C. 1653(b) (underlined text) would have read:

If not in accordance with law, a compensation order made pursuant to [the DBA] may be suspended or set aside, in whole or in part, through injunction

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proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district wherein is located the office of the deputy commissioner whose compensation order is involved. . . .
