PART IV

ADMINISTRATIVE PROCESSING OF CLAIMS, POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE

A. THE CLAIMS PROCESS

2. THE DISTRICT DIRECTOR'S ROLE

The district director is responsible for overseeing the development of the evidence including all relevant medical evidence. 20 C.F.R. §§725.401-409. The district director determines if the evidence supports an initial finding of eligibility. If not, claimant is given an opportunity to submit additional evidence and to have the claim reconsidered. If the evidence does not support entitlement, claimant is so notified and advised of the right to request a hearing. 20 C.F.R. §725.410.

If the evidence supports entitlement, the district director then, if he has not already done so, identifies the coal mine operator or operators, if any, which may be liable for the payment of benefits. 20 C.F.R. §725.410(d). The district director reviews the file to determine the need for further evidence and the status of any responsible operator. If an operator is identified as potentially responsible for the payment of benefits, 20 C.F.R. §725.412, it has 30 days to accept or contest liability. 20 C.F.R. §725.413. Operators are permitted a reasonable time to develop and submit evidence. 20 C.F.R. §725.414. If no operator responsible for the payment of benefits can be identified, the district director authorizes the payment of benefits from the Black Lung Disability Trust Fund. 20 C.F.R §725.411. *See* Part I.B. of the Desk Book.

After reviewing the evidence, the district director may schedule a conference, issue a proposed decision and order, forward the claim to the Office of Administrative Law Judges, or take such other action as is considered appropriate, 20 C.F.R. §725.415(b). Conferences are informal in nature. 20 C.F.R. §725.416. At the conclusion of the conference, the district director prepares a stipulation of contested and uncontested issues. 20 C.F.R. §725.417. The district director issues a proposed decision and order, which includes a recommendation for disposition of the issues presented. 20 C.F.R. §725.418. If no party objects, the proposed decision and order becomes a final decision and order effective thirty days from the date of issuance. 20 C.F.R. §725.419(d). Any party in interest, however, may within 30 days respond to the proposed decision and order and/or request a formal hearing. 20 C.F.R. §§725.419, 725.450, 725.451.

The Board has interpreted Section 725.412(b) as only requiring the district director to send valid notification of a claim to the operator; notice does not have to be

additionally sent to the carrier. ***Osborne v. Tazco, Inc.***, 10 BLR 1-102 (1987). The Sixth Circuit, however, interprets Section 725.412(b) as requiring the district director to send valid notification of the pendency of a claim to both employer and carrier. ***Warner Coal Co. v. Director, OWCP***, 804 F.2d 346, 9 BLR 2-158 (6th Cir. 1986), *rev'g* ***Slaton v. Pyro Mining Co.***, 8 BLR 1-39 (1985); *see also* ***Slaton v. Pyro Mining Co.***, 12 BLR 1-100 (1987), *reversed on other grounds sub nom.* ***Pyro Mining Co. v. Slaton***, 879 F.2d 187, 12 BLR 2-328 (6th Cir. 1989). Consequently in cases arising in the jurisdiction of the Sixth Circuit, the Board requires the district director to send valid notification of the pendency of a claim to all parties whom the district director reasonably considers to be interested parties. ***Abner v. Caudill Const. Co.***, 11 BLR 1-88 (1988), *vacated and remanded on other grds* ***Caudill Const. Co. v. Abner***, 878 F.2d 179, 12 BLR 2-335 (6th Cir. 1989).

Considerable attention has been given to the issue of the proper procedure for appeals of purely discretionary determinations by district directors. The Board has held that the purely discretionary acts of the district director are properly reviewed by the Board in the first instance. ***Whary v. Bush Coal Co.***, 11 BLR 1-150 (1988)(en banc) (McGranery, J., concurring)[decision by the district director as to the existence of good cause for failure to timely controvert the claim properly reviewed in first instance by Board]; ***Osborne v. Tazco, Inc.***, 10 BLR 1-102 (1987); [good cause for failure to timely controvert]; ***Sharber v. Zeigler Coal Co.***, 8 BLR 1-143 (1988)[good cause for failure to timely respond]; ***Duke v. United States Steel Corp.***, 7 BLR 1-914 (1985)[action by district director granting or denying an extension of time].

The Sixth Circuit in ***Pyro Mining Co. v. Slaton***, 879 F.2d 187, 12 BLR 2-328 (6th Cir. 1989), *reversing sub nom.* ***Slaton v. Pyro Mining Co.***, 12 BLR 1-100 (1987) and ***Saylor v. Warner Coal Co.***, 12 BLR 1-205 (1988)(McGranery, J., concurring and dissenting), held, however, that it is within the jurisdiction of the administrative law judge to review the district director's conclusion as to whether a party has established good cause for failure to timely controvert a claim. In the instant cases, the Court held that the administrative law judge had jurisdiction to determine *de novo* whether the petitioners received adequate notice or established good cause to excuse the late filing of controversion, thereby reversing the decisions of the Board in ***Slaton v. Pyro Mining Co.***, 12 BLR 1-100 (1987) and ***Saylor v. Warner Coal Co.***, 12 BLR 1-205 (1988) (McGranery, J., concurring and dissenting). *See* Part IV.A.4.g. of this Desk Book for further information on these cases and, on controversion in general. Thus, in the Sixth Circuit good cause determinations by the district director are to be reviewed by the administrative law judge before being appealed to the Board.

In ***Lukman v. Director, OWCP***, 896 F.2d 1248, 13 BLR 2-332 (10th Cir. 1990), *reversing* 11 BLR 1-71 (1988)(en banc)(Brown and McGranery, JJ., concurring and dissenting), *affirming on recon.*, 10 BLR 1-56 (1987), the Tenth Circuit addressed the Board's holding that a district director's determination as to whether a material change in conditions had been established is directly appealable to the Board. In reversing the

Board's holding, the Tenth Circuit indicated a strong preference for the three-tier system of review for all issues except in those instances where the regulations clearly provide otherwise. The Board has decided to specifically follow the Tenth Circuit's decision in ***Lukman*** to the extent that it applies to determinations of a material change in conditions, *see* ***Dotson v. Director, OWCP***, 14 BLR 1-10 (1990)(en banc order).

CASE LISTINGS

[claimant's failure to respond to district director's Memorandum of Informal Conference within 30 days constitutes acceptance of that finding and becomes the final adjudication of the claim] ***Key v. Alabama By-Products Corp.***, 8 BLR 1-241 (1984).

[section 725.416(d) mandates district director's duty to insure unrepresented claimant understands the nature and effect of proceedings and execute an informed stipulation arises at time of informal conference, not later] ***Wilson v. Youghiogheny and Ohio Coal Co.***, 8 BLR 1-73, 1-76 (1985).

[setting of 15 day deadline for submission of attorneys' fees request is ministerial act properly delegable to claims examiner by district director; Board therefore affirms district director's rejection of fee petition where counsel ignored claims examiner's 15 day deadline and submitted petition well beyond this deadline] ***Bradley v. Director, OWCP***, 8 BLR 1-418 (1985).

[district director has authority to schedule claimant for necessary examinations; an unreasonable refusal to submit to scheduled exam may result in dismissal of claim] 20 C.F.R. §725.406, 725.408; ***Casias v. Director, OWCP***, 6 BLR 1-438 (1983).

[amount of offset should be initially determined by district director; as with any issue, if either party is dissatisfied with determined offset, disputed issue may be appealed to administrative law judge] ***Crider v. Dean Jones Coal Co.***, 6 BLR 1-606 (1983).

[although Section 725.451 requires transmission by the district director of all evidence previously submitted to the administrative law judge, district director had no duty to procure miner's Social Security Administration work record or make assumptions about sufficiency of evidence underlying the initial determination] ***Schmidt v. Amax Coal Co.***, 7 BLR 1-489 (1984).

[district director's determination of amount of time to grant employer for submission of evidence is discretionary and will be affirmed as long as it is reasonable] ***Morris v. Freeman United Coal Mining Co.***, 8 BLR 1-505 (1986); ***Cyktich v. C & K Coal Co.***, 7 BLR 1-529 (1984).

[Sixth Circuit held that Director may contest claims approved by Department of Health,

Education and Welfare (HEW) under Section 435 and certified to Department of Labor for payment; Court held that HEW's initial determinations of eligibility are not binding on Department of Labor as final adjudications of eligibility] ***Director, OWCP v. Goudy***, 777 F.2d 1122, 8 BLR 2-74 (6th Cir. 1985).

DIGESTS

In a Longshore case, the Board held that district directors are not empowered to issue subpoenas *duces tecum*. ***Maine v. Brady-Hamilton Stevedore Co.***, 18 BRBS 129 (1986).

In a case arising in the jurisdiction of the Sixth Circuit, the Board held that the district director *must* send valid notification of the pendency of a claim to all parties whom the district director reasonably *considers* to be *interested parties*. This holding complies fully with ***Slaton v. Pyro Mining Co.***, 8 BLR 1-39 (1985), *rev'd and remanded sub nom.* ***Warner Coal Co. v. Director, OWCP***, 804 F.2d 346, 9 BLR 2-158 (6th Cir. 1986), in which the 6th Cir. required that notice of the proceedings be provided to all known interested parties, including carriers, but did not suggest that the district director actively seek out all possible interested parties. ***Abner v. Caudill Const. Co.***, 11 BLR 1-88 (1988) (vacated and remanded on other grounds ***Caudill Const. Co. v. Abner***, 878 F.2d 179, 12 BLR 2-335 (6th Cir. 1989)).

The United States Court of Appeals for the Sixth Circuit held that the district director has the authority to notify the proper responsible insurance carrier when his investigation reveals that the wrong insurance carrier was notified, even where a final compensation order has been issued against the operator. ***Caudill Const. Co. v. Abner***, 878 F.2d 179, 12 BLR 2-335 (6th Cir. 1989).

The Board as well as several circuits have interpreted Section 725.310 to apply only to the reconsideration of a final order of the district director and have held that Section 725.310 does *not* provide authority for the district director to reconsider or modify a Decision and Order of an administrative law judge. ***Director, OWCP v. Palmer Coking Coal Co.***, 867 F.2d 552 (9th Cir. 1989); ***Director, OWCP v. Kaiser Steel Corp.***, 860 F.2d 377, 12 BLR 2-25 (10th Cir. 1988); ***Director, OWCP v. Peabody Coal Co.***, 837 F.2d 295, 11 BLR 2-31 (7th Cir. 1988), *aff'g* ***Sisk v. Peabody Coal Co.***, 9 BLR 1-40 (1986); ***Director, OWCP v. Drummond Coal Co.***, 831 F.2d 240, 10 BLR 2-322 (11th Cir. 1987), *aff'g* ***Cornelius v. Drummond Coal Co.***, 9 BLR 1-40 (1986); ***Yates v. Armco Steel Corp.***, 10 BLR 1-132 (1987); ***Grissom v. Freeman United Coal Mining Co.***, 10 BLR 1-96 (1987), [*see also* ***Lee v. Consolidation Coal Co.***, 843 F.2d 159, 11 BLR 2-106 (4th Cir. 1988) where in holding that modification requests are to be initiated with the district director, the Fourth Circuit noted that "the initial stages of a modification proceeding, like the initial stages of a new claim proceeding, do not involve hearings,

but investigatory functions."].

A petition for modification must be initiated before the district director. ***Lee v. Consolidation Coal Co.***, 843 F.2d 159, 11 BLR 2-106 (4th Cir. 1988); ***Saginaw Mining Co. v. Mazzuli***, 818 F.2d 1278, 10 BLR 2-119 (6th Cir. 1987); ***Director, OWCP v. Peabody Coal Co.*** **[*Sisk*]**, 837 F.2d 295, 11 BLR 2-31 (7th Cir. 1988); ***Director, OWCP v. Palmer Coking Coal Co.*** **[*Manowski*]**, 867 F.2d 552 (9th Cir. 1989); ***Director, OWCP v. Kaiser Steel Corp.*** **[*Zupon*]**, 860 F.2d 377, 12 BLR 2-25 (10th Cir. 1988); ***Director, OWCP v. Drummond Coal Co.*** **[*Cornelius*]**, 831 F.2d 240, 10 BLR 2-322 (11th Cir. 1987); ***Hoskins v. Director, OWCP***, 11 BLR 1-144 (1988).

Employer's argument that the district director failed to provide timely notice of potential liability under Section 725.412 is rejected by the Board since the district director is under no duty to process claims within a specific time period and employer failed to demonstrate any prejudice resulting from the delay in notification. ***Hoskins v. Shamrock Coal Co.***, 12 BLR 1-117 (1989).

The Board adopted the holding of the United States Court of Appeals for the Sixth Circuit in ***Pyro Mining Co. v. Slaton***, 879 F.2d 187, 12 BLR 2-328 (6th Cir. 1989), that any party dissatisfied with the determination of the district director on the issue of timeliness controversion is entitled to have the issue decided by the Office of the Administrative Law Judges. In reaching its decision, the Board reasoned that because the administrative law judge resolves questions of fact and adequacy of notice involves a factual determination, the parties have a right to a hearing under 20 C.F.R. §725.450. Thus, the Board's decision overrules its prior holding in ***Whary v. Bush Coal Co.***, 11 BLR 1-150 (1988)(en banc)(McGranery, J., concurring), that the district director's determination on good cause is a purely discretionary act appealable only to the Board. Judge Brown, in his concurring opinion, concludes that even though an act of a district director maybe designated discretionary, any claim or application for benefits which is disputed must first be referred to the Office of Administrative Law Judges if a hearing is requested. In his dissent, Judge Smith argues that the good cause determination of the district director is a discretionary act, not a contested issue of law and fact. Thus, he would hold that district director's good cause finding is directly appealable to the Board and not subject to a *de novo* hearing by the administrative law judge. ***Krizner v. United States Steel Mining Co., Inc.***, 17 BLR 1-31 (1992) (en banc) (Brown, J., concurring; Smith, J., dissenting).

In a case involving a duplicate survivor's claim, the Eleventh Circuit held that the district director provided the claimant with adequate notice of the grounds upon which her third claim for benefits was denied, including the fact that her claim was barred under the terms of 20 C.F.R. §725.309(d)(1999), as the district director's denial letter was reasonably calculated to inform claimant of her rights. ***Coleman v. Director, OWCP***, 345 F.3d 861, 23 BLR 2-1 (11th Cir. Sept. 9, 2003), citing ***Jordan v. Benefits Review Board***, 876 F.2d 1455, 12 BLR 2-371 (11th Cir. 1989).

The Eleventh Circuit affirmed the Board's determination that error, if any, in the administrative law judge's admission of the Director's "Reply to the Claimant's Response to Acting Director's Motion for Summary Judgment," without giving the claimant an opportunity to respond, was harmless, as the claimant's duplicate survivor's claim was clearly time barred under 20 C.F.R. §725.309(d)(1999). The court also held that even if the claimant had a protected property interest in obtaining survivor's benefits, the administrative law judge gave her notice and an opportunity to rebut the Director's argument that her claim was legally barred and she took advantage of this opportunity when she responded to the motion for summary judgment. ***Coleman v. Director, OWCP***, 345 F.3d 861, 23 BLR 2-1 (11th Cir. Sept. 9, 2003).

In ***W.L. v. Director, OWCP***, BRB No. 08-0122 BLA (Sept. 30, 2008), the Board held that the administrative law judge erred in concluding that she lacked jurisdiction to hear this case on the ground that claimant did not timely request a hearing. Under 20 C.F.R. §725.419, within thirty days after the date of issuance of a proposed decision and order, any party may, in writing, request a revision of the proposed decision and order or a hearing. Although 20 C.F.R. §725.419 does not specifically define the "date of issuance," the Board deferred to the Director's reasonable interpretation of 20 C.F.R. §725.419 as requiring service of a proposed decision and order on all parties to the claim in order to commence the running of the 30-day appeal period. Because the Proof of Service did not accurately reflect when the proposed decision and order was mailed to claimant, the Board agreed with the Director that the administrative law judge erred in determining the date of issuance of the proposed decision and order and, therefore, the date from which the 30-day appeal period ran. Thus, the Board held that the administrative law judge erred in finding that claimant's hearing request was not timely filed. ***W.L. v. Director, OWCP***, 24 BLR 1-99 (2008).

An administrative law judge has discretionary authority under 20 C.F.R. §725.456(e) to remand a case in order for the district director to satisfy its obligation to provide claimant with a complete pulmonary evaluation. The Board held that this remand order may be exercised, prior to the assembly of the evidentiary record at the formal hearing and without prior notice to the parties. The Board further rejected employer's assertion that liability for benefits must transfer to the Trust Fund because the district director had not satisfied its obligation prior to forwarding the case to the Office of Administrative Law Judges. ***R.G.B., et. al. v. Southern Ohio Coal Co., et. al.***, BLR , BRB Nos. 08-0491 BLA, 08-0521 BLA, 08-0463 BLA, 08-0464 BLA, 08-0465 BLA (Aug. 28, 2009) (*en banc*).

a. Notification of Claim/Initial Finding

The United States Court of Appeals for the Sixth Circuit rejected employer's challenge to the validity of 20 C.F.R. §725.413(b) (2000) (now found at 20 C.F.R. §725.412(a)(2)),

which provided that a responsible operator waived its right to contest a claim if it did not respond to the district director's notice of initial finding within thirty days. The court held that because the regulation provided for notice and an opportunity to be heard, and permitted an employer to file an untimely controversion if it established good cause for the delay, the requirements of federal due process and the Administrative Procedure Act were satisfied. The court also ruled that the notice of initial finding was properly served and was adequately detailed, even though it did not specify the basis for the determination that claimant had established a material change in conditions since the denial of a prior claim. In addition, the court held that employer's failure to timely respond to the notice of initial finding precluded it from challenging the merits of the claim in a request for modification filed pursuant to 20 C.F.R. §725.310. ***Arch of Kentucky, Inc. v. Director, OWCP* [*Hatfield*]**, 556 F.3d 472, 24 BLR 2-135 (6th Cir. 2009).

b. Maintenance of the Record

The Tenth Circuit rejected employer's argument that liability for benefits awarded in a subsequent claim should be transferred to the Trust Fund because records from the prior claim were destroyed. The court held that employer was not prejudiced by the destruction of the records, as employer conceded total disability - the element of entitlement previously adjudicated against the miner. ***Energy West Mining Co. v. Oliver***, 555 F.3d 1211, 24 BLR 2-155 (10th Cir. 2009).

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