

BRB No. 99-0786 BLA

CHARLES PUKAS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SCHUYLKILL CONTRACTING	)	DATE ISSUED:
COMPANY	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for employer.

Barry A. Joyner (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-1304) of Administrative Law Judge Ralph A. Romano denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). This case is before the Board for the fourth time. In its two prior decisions,

the Board set forth the procedural history of this case. *Pukas v. Schuylkill Contracting Co.*, BRB No. 96-1413 BLA (Jul. 29, 1997)(unpub.); *Pukas v. Schuylkill Contracting Co.*, BRB No. 95-1041 BLA (Nov. 30, 1995)(unpub.). We now focus only on those procedural aspects relevant to the issues raised in this appeal.

In a Decision and Order on Remand issued on June 25, 1996, the administrative law judge denied claimant's request for modification of the administrative law judge's previous denial of benefits. Director's Exhibit 157. Pursuant to claimant's appeal, the Board affirmed the administrative law judge's Decision and Order, and subsequently denied claimant's motion for reconsideration. [1997] *Pukas, supra*; Director's Exhibits 164, 166.

Thereafter, claimant requested modification pursuant to 20 C.F.R. §725.310 and submitted additional medical evidence. Director's Exhibit 167. After claimant received the district director's proposed order denying modification, he filed a request for a formal hearing. Director's Exhibit 177. On October 1, 1998, the administrative law judge issued an Order to Show Cause why a formal hearing should be held on claimant's modification request. By letter dated October 12, 1998, claimant responded, requesting a hearing before the administrative law judge. On October 15, 1998, the administrative law judge issued an order stating that no hearing would be held on claimant's request for modification. Claimant requested reconsideration of the administrative law judge's ruling. In his Decision and Order denying benefits, the administrative law judge again denied claimant's request for a hearing, and found that the record did not demonstrate either a change in conditions or a mistake in a determination of fact pursuant to Section 725.310. Accordingly, he denied benefits.

On appeal, claimant contends that the administrative law judge erred in denying claimant's request for a hearing on modification. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds, requesting that the Board remand this case to the administrative law judge for a hearing.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Section 22 of the Longshore and Harbor Workers' Compensation Act (LHWCA) specifies that modification requests are to be reviewed "in accordance with the procedure prescribed in respect of claims in section [19 of the LHWCA, 33 U.S.C. §919]." 33 U.S.C. §922, as incorporated into the Act by 30 U.S.C. §932(a); accord 20 C.F.R. §725.310(b)("[m]odification proceedings shall be conducted in accordance with the provisions of [20 C.F.R. Part 725, setting forth the procedures for the adjudication of black

lung claims] as appropriate”); *see Robbins v. Cyprus Cumberland Coal Co.*, 146 F.3d 425, 21 BLR 2-495 (6th Cir. 1998). Section 19 of the LHWCA, in turn, provides for a hearing to be held whenever a party so requests. 33 U.S.C. §919(c).

In addition to the statute, the regulations addressing black lung claims provide that “[i]n any claim for which a formal hearing is requested or ordered, . . . , the [district director] shall refer the claim to the Office of Administrative Law Judges for a hearing.” 20 C.F.R. §725.421(a). The regulations also provide that “[a]ny party to a claim (*see* §725.360) shall have a right to a hearing concerning any contested issue of fact or law unresolved by the [district director].” 20 C.F.R. §725.450.

Thus, as both claimant and the Director contend, 30 U.S.C. §932(a), as implemented by 20 C.F.R. §§725.450, 725.451, 725.421(a), mandates that an administrative law judge hold a hearing on any claim, including a request for modification filed with the district director, whenever a party requests such a hearing, unless such hearing is waived by the parties, *see* 20 C.F.R. §725.461(a), or a party requests summary judgment, *see* 20 C.F.R. §725.452(c). *See also* 20 C.F.R. §725.310(c); *Betty B Coal Co. v. Director, OWCP [Stanley]*, 194 F.3d 491, 498, 22 BLR 2-1, 2-12-13 (4th Cir. 1999); *Robbins, supra*; *Cunningham v. Island Creek Coal Co.*, 144 F.3d 388, 390, 21 BLR 2-384, 2-388-89 (6th Cir. 1998); *Arnold v. Peabody Coal Co.*, 41 F.3d 1203, 1208-09, 19 BLR 2-22, 2-33 (7th Cir. 1994); *Worrell v. Consolidation Coal Co.*, 8 BLR 1-158, 1-160 (1985). Consequently, we vacate the administrative law judge’s Decision and Order and remand the case to the administrative law judge to conduct a hearing *de novo* on claimant’s request for modification pursuant to Section 725.310. *See Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995).

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge

## **PUBLISHED CASE NOTIFICATION**

CASE NAME: *Pukas v. Schuylkill Contracting Co.*, 22 BLR 1- (2000)

DATE ISSUED: May 10, 2000

### **DESK BOOK SECTIONS**

III.G. Modifications (digests)

IV.A.3. Formal Hearing (digests)

IV.C.1. Right to a Hearing; Waiver (digests)

The Board held that the Act and regulations mandate that an administrative law judge hold a hearing on any claim, including a request for modification filed with the district director, whenever a party requests such a hearing, unless such hearing is waived by the parties or a party requests summary judgment. *Pukas v. Schuylkill Contracting Co.*, 22 BLR 1- (2000).