

BRB No. 88-2533 BLA

CLIFFORD EARL SHREVE )

)  
Claimant-Petitioner )

)  
v. )

)  
ISLAND CREEK COAL COMPANY )

) DATE ISSUED:  
Employer-Respondent )

)  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )

)  
Party-In-Interest ) ORDER ON RECONSIDERATION

Employer has timely filed a Motion for Reconsideration of the Board's Decision and Order in *Shreve v. Island Creek Coal Co.*, BRB No. 88-2533 BLA (Sep. 19, 1989)(unpub.). See 20 C.F.R. §802.407(a). In *Shreve*, the Board vacated the administrative law judge's finding that employer established rebuttal of the interim presumption pursuant to 20 C.F.R. §727.203(b)(2) and remanded the case to the administrative law judge for further consideration of the evidence pursuant to 20 C.F.R. §727.203(b)(2), in accordance with the standard enunciated in *Sykes v. Director, OWCP*, 812 F.2d 890, 10 BLR 2-95 (4th Cir. 1987), and for further consideration of the evidence pursuant to 20 C.F.R. §727.203(b)(3). See *Shreve, supra*. In its motion for reconsideration, employer contends that the Board erred in stating that employer did not file a response brief on appeal and in failing to hold that the administrative law judge made a finding sufficient to establish rebuttal of the interim presumption pursuant to 20 C.F.R. §727.203(b)(3). Further, employer requests that the Board affirm the administrative law judge's finding that claimant is entitled to a hearing on his initial claim for benefits and that the Board acknowledge that employer is relieved from potential liability for this claim.

Employer's contention that the Board erroneously stated that employer did not file a response brief on appeal is correct. Employer's response brief was timely filed

on October 12, 1989.

Also, employer's contention regarding a finding made by the administrative law judge which employer argues is sufficient to establish rebuttal pursuant to 20 C.F.R. §727.203(b)(3) need not be addressed as this issue was addressed in the Board's Decision and Order. *See Shreve, supra.*

Additionally, in regards to employer's status regarding its liability for this claim, under the 1981 Amendments, liability transfers from coal operators to the Black Lung Disability Trust Fund for claims which were denied prior to March 1, 1978, the effective date of the Black Lung Benefits Reform Act of 1977, and which are or have been approved under Section 435, the reviewing provision of the Act. 30 U.S.C. §932(j)(3); 26 U.S.C. §9501(d)(1)(B). On September 20, 1982, the district director notified employer that it was relieved from liability of responsibility for payment of actual or potential benefits with regard to this claim pursuant to the 1981 Amendments. Thus, it is noted that employer is not liable for the payment of benefits on this claim. Further, as no one has challenged the administrative law judge's finding that claimant was entitled to a hearing on his initial claim, this finding is affirmed. See Administrative Law Judge's Decision and Order at 4; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Accordingly, employer's motion for reconsideration is granted and the Board's prior Decision and Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge