

BRB No. 07-0966 BLA

H.H. )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 MARROWBONE DEVELOPMENT )  
 COMPANY )  
 )  
 and )  
 )  
 WEST VIRGINIA CWP ) DATE ISSUED: 08/28/2008  
 FUND/BRICKSTREET )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Order of Dismissal on Remand of Jeffrey Tureck,  
Administrative Law Judge, United States Department of Labor.

H. H., Delbarton, West Virginia, *pro se*.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia,  
for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and  
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Order of Dismissal on  
Remand (2005-BLA-5255) of Administrative Law Judge Jeffrey Tureck rendered 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 second time. In the last appeal, in light of claimant's *pro se* status and claimant's assertion that the administrative law judge may have misconstrued his explanation for his failure to attend the hearing, the Board vacated the administrative law judge's Order of Dismissal, and remanded this case for reconsideration of employer's motion to dismiss, in conjunction with claimant's February 8, 2006 response to the administrative law judge's Order to Show Cause and claimant's letter of appeal to the Board dated March 17, 2006. [*H.H.*] *v. Marrowbone Development Co.*, BRB No. 06-0559 BLA (Jan. 30, 2007)(unpub.). On remand, the administrative law judge again dismissed the miner's claim for failure to attend the hearing without good cause.

On appeal, claimant generally challenges the administrative law judge's Order of Dismissal on Remand, and seeks another opportunity to pursue his claim. Employer urges affirmance of the dismissal. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response.

In an appeal by a claimant proceeding without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hichman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). The Board reviews the administrative law judge's procedural rulings for abuse of discretion. *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-55 (2004)(*en banc*).

Under the regulation governing dismissals for cause, "[t]he administrative law judge may, at the request of any party . . . dismiss a claim . . . [u]pon the failure of the claimant or his or her representative to attend a hearing without good cause." 20 C.F.R. §725.465(a)(1). In his original Order of Dismissal, the administrative law judge reviewed claimant's explanation for his failure to appear at the hearing, and concluded that good cause was not demonstrated because claimant merely decided it was not worth the effort to attend.<sup>1</sup> Order of Dismissal at 1-2. Upon reconsideration of claimant's

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<sup>1</sup> Claimant explained that he did not attend the hearing because he could not find a lawyer, because the doctors always favor the coal companies and claimant did not want to undergo any further medical testing, and because it seemed that his claim had already been decided against him. Claimant's Letter of February 8, 2006.

explanation in conjunction with claimant's letter of appeal to the Board,<sup>2</sup> the administrative law judge again found that good cause was not demonstrated. In so finding, the administrative law judge noted that attendance at a hearing is not optional, and that claimant should have been aware of the consequences of his failure to attend, as the Notice of Hearing and Pre-Hearing Order stated, in boldface type, that: "[u]nless a continuance is granted, the claimant's unexcused failure to appear at the hearing may result in the dismissal of the claim." Order of Dismissal on Remand at 2. The administrative law judge rationally concluded that, regardless of claimant's articulated motives, claimant consciously chose not to appear at the hearing, and therefore failed to establish good cause. *Id.* As we can find no abuse of discretion in the administrative law judge's determination, it is affirmed. 20 C.F.R. §725.465(a)(1); *Dempsey*, 23 BLR 1-47, 1-55 (2004)(*en banc*); *see also Clevinger v. Regina Fuel Co.*, 8 BLR 1-1, 1-2 (1985).

To the extent that claimant's letter to the Board shows an intent to pursue his claim, claimant may file a request for modification with the district director. 20 C.F.R. §725.310; *Lee v. Consolidation Coal Co.*, 843 F.2d 159, 11 BLR 2-106 (4th Cir. 1988); *Ashworth v. Blue Diamond Coal Co.*, 11 BLR 1-167 (1988).

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<sup>2</sup> Claimant asserted that he did, in fact, feel that he had a lot to fight for because he was never sick until he started working in the coal mines, but he had received "so many letters from the company lawyers it just seemed hopeless," and he was afraid the judge got the wrong impression. Claimant's Letter of March 17, 2006.

Accordingly, the administrative law judge's Order of Dismissal on Remand is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge