U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 18-0550 BLA

JAMES BAILEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
RONNIE ISON TRUCKING COMPANY	)	DATE ISSUED: 12/13/2019
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Modification of William T. Barto, Administrative Law Judge, United States Department of Labor.

Paul E. Jones and Denise Hall Scarberry (Jones & Walters, PLLC), Pikeville, Kentucky, for employer.

Before: BUZZARD, ROLFE, and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Modification (2013-BLA-05197) of Administrative Law Judge William T. Barto pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves claimant's

third request for modification of the denial of a subsequent claim[1] filed on May 13, 2005, and is before the Board for the second time.

In a Decision and Order dated October 1, 2007, Administrative Law Judge Kenneth A. Krantz found claimant established at least twenty-two years of coal mine employment, and the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) based on new medical opinion evidence. Director's Exhibit 61. Consequently, he found claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309.[2] *Id*. On the merits, he found claimant established the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a), 718.203(b) and a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b). *Id*. He also found claimant established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c) and awarded benefits. *Id*.

Upon review of employer's appeal, the Board vacated Judge Krantz's evidentiary rulings and findings that the new evidence established pneumoconiosis and a change in an applicable condition of entitlement. *J.B.* [*Bailey*] *v. Ronnie Ison Trucking Co*., BRB No. 08-0161 BLA, slip op. at 3, 4, 9 (Oct. 30, 2008) (unpub.). The Board remanded the case to Judge Krantz to reconsider the admissibility of Dr. Caffrey's January 18, 2007 biopsy report and Dr. Broudy's November 8, 2006 medical report, and to make a specific and complete length of coal mine employment finding. *Id*. at 4-5, 9. The Board also instructed Judge Krantz to address whether Dr. Alam's diagnoses of clinical pneumoconiosis and legal pneumoconiosis are sufficiently reasoned. *Id*. at 7.

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[1] On March 26, 2004, the district director denied claimant's first claim, filed on September 3, 2002, because he failed to establish the existence of pneumoconiosis and total disability due to pneumoconiosis. Director's Exhibit 1. Claimant did not take any further action before filing his current claim. Director's Exhibit 3.

[2] Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co*., 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's prior claim was denied because he failed to establish pneumoconiosis and total disability due to pneumoconiosis. Director's Exhibit 1. Consequently, to obtain review of the merits of his claim, claimant had to establish one of these elements of entitlement.

On remand, Judge Krantz found the evidence did not establish pneumoconiosis and denied benefits. Director's Exhibit 76. Claimant filed two subsequent requests for modification on May 10, 2010 and July 21, 2011, each of which the district director denied. Director's Exhibits 77, 91, 94, 103. Claimant timely filed his third request for modification on February 7, 2012. Director's Exhibit 106. Following the district director's denial of benefits, the case was referred to the Office of Administrative Law Judges and assigned to Administrative Law Judge William T. Barto (the administrative law judge). Director's Exhibits 127, 129, 133. Both claimant and employer submitted new evidence at the formal hearing on September 6, 2016. Claimant's Exhibits 1-3; Employer's Exhibits 1-3.

In the Decision and Order Granting Modification that is the subject of the current appeal, the administrative law judge credited claimant with 25.81 years of underground coal mine employment or surface mine employment in conditions substantially similar to those underground and accepted employer's concession that claimant is totally disabled. He therefore found claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[3] He also found employer did not rebut the presumption and, consequently, found claimant established a change in conditions at 20 C.F.R. §725.310 and a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c). He also found that granting modification would render justice under the Act and awarded benefits commencing February 2012, the month in which claimant filed his third modification request.

In the present appeal, employer argues the administrative law judge erred in finding claimant has at least fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. Employer also contends the administrative law judge erred in finding it did not rebut the presumption and in determining that granting claimant's request for modification rendered justice under the Act. Neither claimant nor the Director, Office of Workers' Compensation Programs, filed a response brief in this appeal.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order Granting Modification if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C.

[3] Under Section 411(c)(4) of the Act, claimant is presumed totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment occurred in Kentucky. *See Shupe*

§921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The administrative law judge may grant modification based on either a change in conditions or a mistake in a determination of fact. 20 C.F.R. §725.310(a). When a request for modification is filed, "any mistake may be corrected [by the administrative law judge], including the ultimate issue of benefits eligibility." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971); *see King v. Jericol Mining, Inc.*, 246 F.3d 822, 825 (6th Cir. 2001); *Nataloni v. Director, OWCP*, 17 BLR 1-82, 1-84 (1993).

Invocation of the Section 411(c)(4) Presumption

Qualifying Coal Mine Employment

To invoke the Section 411(c)(4) presumption, claimant must establish at least fifteen years of employment in underground coal mines or in surface mines "in conditions substantially similar to those in underground mines." 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(1)(ii). "The conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2); *see Zurich v. Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018) (Kethledge, J., concurring); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 663 (6th Cir. 2015); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 489-90 (6th Cir. 2014).

The administrative law judge credited claimant with 8.64 years of underground coal mine employment and 17.17 years of surface work, for a total of 25.81 years of coal mine employment. Decision and Order at 7; Director's Exhibit 76. He noted claimant testified that his surface work was as a truck driver. Decision and Order at 7. Finding claimant was regularly exposed to coal mine dust while performing his surface work, the administrative law judge determined claimant established at least fifteen years of qualifying coal mine employment, sufficient to invoke the Section 411(c)(4) presumption. *Id.* at 8.

Employer does not contest the administrative law judge's findings that claimant worked as a coal miner for 25.81 years, including 8.64 years in underground mines and 17.17 years as a truck driver at surface mines. We therefore affirm those findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Employer solely challenges the administrative law judge's finding that the conditions of claimant's surface work as a

v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 1; Hearing Transcript at 7.

truck driver were substantially similar to those in underground mines. Employer's Brief at 6-8.

We reject employer's argument that claimant's exposure to coal mine dust as a surface truck driver was not regular but "merely sporadic or incidental" because it "was limited in time to instances such as loading [coal] and not the full course of [a] shift." Employer's Brief at 7-8. Occupational dust exposure under the Act encompasses total exposure to various dusts around a coal mine and is not limited solely to exposure to coal dust itself. 65 Fed. Reg. 79,920, 79,958 (Dec. 20, 2000); 20 C.F.R. §725.101(a)(19). As the Department of Labor has explained, claimant thus must establish "the dust conditions prevailing at the non-underground mine or mines at which [he] worked. The objective of this evidence is to show that the miner's duties regularly exposed him to coal mine dust, and thus the miner's work conditions approximated those at an underground mine."[5] 78 Fed. Reg. 59,202, 59,105 (Sept. 25, 2013). Claimant met that burden.

Claimant testified he drove a coal truck at strip mines anywhere from twelve to eighteen hours per day and never wore any type of mask or breathing equipment. Director's Exhibits 18 at 11, 17; 88 at 17. He also testified he "hauled[] coal from the strip job to the tipple." Director's Exhibit 88 at 11. He further testified he never had air conditioning when he worked at Glenn's Trucking Company, Incorporated, but he had air conditioning while working for employer. Hearing Transcript at 15-16; Director's Exhibits 52 at 19; 88 at 16-17.

Reviewing claimant's testimony over the course of many years, the administrative law judge found he repeatedly testified he was exposed to coal mine dust while in his truck's cab. Decision and Order at 7-8. Claimant testified that even though he used the air conditioner, "there was dust and stuff coming up in the [c]racks and under the doors and stuff." Director's Exhibit 18 at 11. He further testified, "yes, there's dust in truck driving . . . [i]t comes up into them cracks and them trucks," and "in them trucks them cracks and things in them doors and everything, had dust in there pretty bad." Hearing Transcript at

[5] Employer argues claimant did not "attempt to quantify the amount of dust he was exposed to." Employer's Brief at 7. Contrary to employer's assertion, claimant is not required to "quantify" the amount of dust to which he was exposed. 20 C.F.R. §718.305(b)(2); *see Zurich Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018) (Kethledge, J., concurring) (rejecting argument that claimant must provide evidence of "the actual dust conditions" and citing with approval the Department of Labor's position that "dust exposure evidence will be inherently anecdotal"); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 490 (6th Cir. 2014) (claimant's testimony that the conditions of his employment were "very dusty" sufficient to establish regular exposure).

13, Director's Exhibit 52 at 18. He also testified he was specifically exposed to coal dust "when they were loading your truck, there is all kinds of coal dust flying all over the place." Director's Exhibit 88 at 15. Describing the general dust conditions within his truck, he testified, ". . . you could sit in the seat and drive along and watch the dust and stuff come right up through the floorboard right up between the doors and stuff. It wasn't tight at all." *Id*. at 40. The administrative law judge therefore rationally found claimant's uncontradicted testimony sufficiently demonstrated regular exposure to coal mine dust in his surface mine employment. Decision and Order at 8.

Because it is supported by substantial evidence, we affirm the administrative law judge's determination claimant was regularly exposed to coal mine dust while working as a truck driver at surface mines. *See Kennard*, 790 F.3d at 664-65; *Sterling*, 762 F.3d at 490; *Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1343-44 n.17 (10th Cir. 2014) (claimant's testimony that it was impossible to keep the dust out of the cabs of the vehicles he drove and that he was exposed to "pretty dusty" conditions "provided substantial evidence of regular exposure to coal mine dust"); Decision and Order at 8. We therefore affirm the administrative law judge's finding that claimant established at least fifteen years of qualifying coal mine employment.

In light of our affirmance of the administrative law judge's finding that claimant established at least fifteen years of qualifying coal mine employment, and his acceptance of employer's concession of a totally disabling respiratory impairment, we affirm his finding that claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4). 20 C.F.R. §718.305(b)(1)(i)-(iii); Decision and Order at 8.

Rebuttal of the Section 411(c)(4) Presumption

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to establish that claimant has neither legal nor clinical pneumoconiosis[6] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis

[6] Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic pulmonary disease or respiratory or pulmonary impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). Clinical pneumoconiosis consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The administrative law judge found that employer failed to establish rebuttal by either method.[7]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, employer must establish claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting). The administrative law judge considered the opinions of Drs. Rosenberg, Broudy, and Dahhan that claimant does not have legal pneumoconiosis but has an obstructive impairment/emphysema due to smoking and unrelated to coal dust exposure.[8] Director's Exhibits 51, 120; Employer's Exhibit 3. Finding their opinions not well-reasoned, the administrative law judge determined employer failed to disprove the existence of legal pneumoconiosis. Decision and Order at 12-17.

We reject employer's assertion the administrative law judge improperly required Dr. Rosenberg to "eliminate" any contribution of coal mine dust to claimant's respiratory impairment. Employer's Brief at 10. Contrary to employer's assertion, the administrative law judge did not find Dr. Rosenberg's opinion insufficient to disprove the existence of legal pneumoconiosis because he failed to "eliminate" coal mine dust exposure as a cause of claimant's respiratory impairment. Decision and Order at 12-15. Rather, the administrative law judge found Dr. Rosenberg's opinion unpersuasive based on the

[7] The administrative law judge determined that employer rebutted clinical pneumoconiosis, but did not rebut legal pneumoconiosis. Decision and Order at 11, 18; *see* 20 C.F.R. §718.305(d)(1).

[8] The administrative law judge also considered the opinions of Drs. Rasmussen and Caffrey. Decision and Order at 16-18. He correctly noted that Dr. Rasmussen's opinion diagnosing legal pneumoconiosis does not assist employer in rebutting the Section 411(c)(4) presumption. *Id.* at 18; Director's Exhibit 79. Further, the administrative law judge accorded no weight to Dr. Caffrey's opinion because he did not address the issue of legal pneumoconiosis. Decision and Order at 16; Director's Exhibit 51. As employer does not challenge this finding, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

physician's own rationale for why *he* excluded coal mine dust as a cause of claimant's impairment.[9] Decision and Order at 12-15.

Dr. Rosenberg opined that when coal mine dust exposure causes obstruction, the general pattern is a reduced FEV1, with a corresponding reduction of the FVC, preserving the FEV1/FVC ratio. Employer's Exhibit 3 at 8-10. Due to the "extreme decline" in claimant's FEV1/FVC ratio, Dr. Rosenberg concluded cigarette smoking, not coal mine dust exposure, caused claimant's impairment. *Id*. at 10. The administrative law judge permissibly discredited this portion of Dr. Rosenberg's opinion because his reasoning conflicts with the Department of Labor's recognition that coal mine dust exposure can cause clinically significant obstructive disease, which can be shown by a reduction in the FEV1/FVC ratio. *See* 65 Fed. Reg. at 79,943; *Sterling*, 762 F.3d at 491; Decision and Order at 12-13. He also noted that Dr. Rosenberg relied on a reduced diffusion capacity to support his opinion that claimant's respiratory impairment is representative of a diffuse form of emphysema related to smoking and not coal mine dust exposure. Decision and Order at 13-14; Employer's Exhibit 3 at 12-15. He permissibly found that "simply stating" a reduced diffusing capacity correlates with the diffuse emphysema that develops from cigarette smoking "does not adequately explain why [c]laimant's emphysema was not aggravated by his history of coal mine dust exposure." Decision and Order at 14; *see* 20 C.F.R. §§718.201(b); 718.305(d)(1)(i)(A); *Minich*, 25 BLR at 1-155 n.8.

Nor is there merit to employer's assertion the administrative law judge erred in discrediting Dr. Broudy's opinion that claimant's obstructive impairment is due to smoking and not coal mine dust exposure. Employer's Brief at 11-12; Director's Exhibit 51 at 98. Dr. Broudy explained it is "extremely rare" for coal mine dust inhalation to cause a purely obstructive impairment when there is no x-ray evidence of pneumoconiosis. *Id*. at 103. The administrative law judge permissibly found Dr. Broudy's opinion inconsistent with the definition of legal pneumoconiosis, which recognizes that coal mine dust can cause a purely obstructive pulmonary impairment in the absence of radiographic evidence of pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 487-88 (6th Cir. 2012); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *see also* 65 Fed. Reg. at 79,971 (recognizing that coal mine dust can cause clinically significant obstructive lung disease, even in the absence of x-ray evidence of clinical pneumoconiosis); 65 Fed Reg. at 79,938 (recognizing that coal dust-induced chronic obstructive pulmonary disease (COPD) is clinically significant and that the causal

[9] Dr. Rosenberg opined claimant's obstruction was "entirely" related to cigarette smoking and there is nothing to provide any basis for attributing "any" of his problems to coal dust. Employer's Exhibit 3 at 12, 18.

relationship between coal mine dust and COPD is not merely rare); Decision and Order at 17.

Further, we reject employer's assertion the administrative law judge erred in discrediting Dr. Dahhan's opinion that claimant's impairment is entirely due to the effects of cigarette smoking. Decision and Order at 15-16; Employer's Brief at 12; Director's Exhibit 51 at 214. Dr. Dahhan relied in part on the fact that claimant's having been prescribed bronchodilators indicated his treating physicians believed his condition is responsive to such measures, which is inconsistent with the permanent adverse effects of coal dust on the respiratory system. Decision and Order at 15; Director's Exhibit 51 at 216. As the administrative law judge accurately observed, however, Dr. Dahhan noted the pulmonary function study he administered on December 29, 2006 showed "no change" after bronchodilators and the only other study he reviewed, from March 13, 2006, did not contain post-bronchodilator values. Decision and Order 16; Director's Exhibit 51 at 215; Claimant's Exhibit 1. Thus, the administrative law judge permissibly discredited Dr. Dahhan's conclusions as poorly documented and inadequately explained. *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); Decision and Order at 16.

Because substantial evidence supports the administrative law judge's discrediting of the opinions of Drs. Rosenberg, Broudy, and Dahhan,[10] we affirm his finding that employer failed to establish claimant does not have legal pneumoconiosis, precluding a rebuttal finding that claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The administrative law judge next considered whether employer rebutted the Section 411(c)(4) presumption by establishing that "no part of [claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). He rationally found the same reasons the opinions of Drs. Rosenberg, Broudy, and Dahhan that claimant does not have legal pneumoconiosis were discredited also undermined their opinions that his disabling respiratory impairment is not caused by pneumoconiosis. *See Big Branch Res., Inc. v.*

[10] Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Rosenberg, Broudy, and Dahhan, any error in discrediting their opinions for other reasons would be harmless. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Therefore, we need not address employer's remaining arguments regarding the weight accorded to their opinions.

Ogle, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 19. Therefore, we affirm the administrative law judge's determination employer failed to prove that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii).

Because claimant invoked the Section 411(c)(4) presumption and employer did not rebut it, we affirm the administrative law judge's finding that claimant established a change in conditions at 20 C.F.R. §725.310.

Justice under the Act

Finally, employer argues the administrative law judge erred in finding that granting modification rendered justice under the Act, asserting the factors of accuracy, quality of evidence, and motive do not weigh in favor of modification. Employer's Brief at 13-14. Employer's contention lacks merit.

In *Kinlaw v. Stevens Shipping & Terminal Co.*, 33 BRBS 68 (1999), the Board held that "while [an] administrative law judge has the authority to reopen a case based on any mistake in fact, [an] administrative law judge's exercise of that authority is discretionary, and requires consideration of competing equities in order to determine whether reopening the case will indeed render justice." *Kinlaw*, 33 BRBS at 72, *citing Wash. Soc'y for the Blind v. Allison*, 919 F.2d 763, 769 (D.C. Cir. 1991). Courts have recognized that in considering whether to reopen a claim, an adjudicator must exercise the discretion granted under 20 C.F.R. §725.310 by assessing factors relevant to rendering justice under the Act. *Sharpe v. Director, OWCP*, 495 F.3d 125 (4th Cir. 2007); *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533 (7th Cir. 2002); *D.S.* [*Stiltner*] *v. Ramey Coal Co.*, 24 BLR 1-33 (2008). These relevant factors include the need for accuracy, the diligence and motive of the party seeking modification, and the futility or mootness of a favorable ruling. *Id.*

Citing the relevant factors, the administrative law judge found the interest in accuracy outweighs the interest in finality. Decision and Order at 20-21. He determined claimant acted diligently in requesting modification, submitted relevant evidence, and acted with a good faith motive. *Id.* He also determined claimant's modification request was not futile or moot because he established his entitlement to benefits. *Id.* Because the administrative law judge did not abuse his discretion, we affirm his determination that granting modification renders justice under the Act. *See O'Keeffe*, 404 U.S. at 256; *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994); *Branham v. BethEnergy Mines*, 20 BLR 1-27, 1-34 (1996); Decision and Order at 21.

Because employer has raised no other issues with respect to the grant of modification of claimant's subsequent claim, we affirm the administrative law judge's

determination that claimant established a basis for modification, and we further affirm the award of benefits.

Accordingly, the administrative law judge's Decision and Order Granting Modification is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge