

BRB No. 04-0442 BLA

JOE A. HATFIELD, JR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	
CORPORATION)	
)	DATE ISSUED: 02/28/2005
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Order Granting Withdrawal of Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

Tab R. Turano (Greenberg Traurig LLP), Washington, D.C., for employer.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the administrative law judge's Order Granting Withdrawal (02-BLA-5452) of Administrative Law Judge Robert J. Lesnick on a claim for benefits 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). The administrative law judge allowed the claim for benefits to be withdrawn pursuant to 20 C.F.R. §725.306.

On appeal, employer asserts that the administrative law judge erred by misconstruing claimant's request to withdraw his request for a hearing as a request to withdraw his claim. Employer urges the Board to vacate the administrative law judge's order and remand the case to the district director to enter a denial of benefits. Employer further asserts that the administrative law judge's findings at Section 725.306 do not comply with the law. Claimant has not submitted a brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand. The Director agrees with employer's position that claimant asked that his request for a hearing be withdrawn, not that his claim be withdrawn. Therefore, the Director maintains that the administrative law judge erred by granting, *sua sponte*, withdrawal of the claim.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §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).

Employer contends that the administrative law judge erred by misconstruing claimant's request at the hearing as a request for withdrawal of his claim. At the hearing, claimant's counsel asked that he be "allowed to withdraw the petition for appeal for the hearing that we're here for today." Hearing Transcript at 6. In his Order Granting Withdrawal, the administrative law judge stated "During the hearing, Kris Kostenko, counsel for the Claimant, requested that the claim be withdrawn." Order Granting Withdrawal at 1. Because the administrative law judge has not explained his rationale for finding claimant's request to be a request to withdraw his claim, his Order Granting Withdrawal does not comply with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a). *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). We, therefore, vacate the administrative law judge's Order Granting Withdrawal.

On remand, the administrative law judge must evaluate claimant's request, made at the hearing, to determine what claimant was requesting. The administrative law judge must fully explain the bases for his conclusions. If the administrative law judge determines that claimant's request was a request to withdraw his claim, the administrative law judge must consider whether claimant's request satisfies the requirements of 20 C.F.R. §725.306. *See Clevenger v. Mary Helen Coal Co.*, 22 BLR 1-193 (2002)(*en banc*).

Accordingly, the administrative law judge's Order Granting Withdrawal is vacated, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge