

BRB No. 04-0895 BLA
Case No. 91-BLA-1088

BRYANT HESS)	
)	
Claimant-Petitioner)	DATE ISSUED: February 15, 2005
v.)	
)	
DOMINION COAL CORPORATION)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

By Order dated December 15, 2004, the Board ordered claimant to show cause why his appeal should not be dismissed for failure to file the Petition for Review and brief. Subsequently, on January 5, 2005, the Board received employer's motion requesting that the Board dismiss claimant's appeal for failure to file the Petition for Review and brief.

On January 21, 2005, the Board received claimant's request to remand the captioned case to the Office of the District Director for modification proceedings. Employer has filed an objection.

The Board hereby grants claimant's request, dismisses his appeal and remands this case to the Office of the District Director for consideration of claimant's petition for modification. 20 C.F.R. §§825.310, 802.301. Employer's objection to claimant's request is denied.

The Board will reinstate this case only if the petitioner requests reinstatement. The request for reinstatement must be filed with the Board within thirty (30) days from the date the Order on modification is filed and must be identified by the BRB No. 04-0895 BLA. The request for reinstatement must be served on all parties. If reinstatement is requested, the Board will consider only the issues raised in claimant's appeal of the administrative law judge's Decision and Order on Fifth Remand Denying Living Miner's Benefit issued August 18, 2004.

After the district director processes the request for modification, the case may be transferred to an administrative law judge for a hearing pursuant to the regulations. In the event the administrative law judge denies modification and claimant wishes the Board to consider not only the original appeal, but also whether the denial of modification was erroneous, a Notice of Appeal of the decision denying modification must be filed, in addition to the request for reinstatement. The Notice of Appeal must also be filed with the Board within thirty (30) days of the date the decision on modification is issued. 20 C.F.R. §§802.205, 802.301(c). The appeal of the decision on modification will be assigned a new docket number and will be consolidated with BRB No. 04-0895 BLA.

In the event an administrative law judge grants modification any party who is aggrieved by the decision granting modification may file an appeal with the Board within thirty (30) days of the date the decision granting modification is issued. 20 C.F.R. §§802.205, 802.301(c).

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge