

BRB No. 05-0610 BLA

JOEL WALTERS)
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 02/16/2006
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,po)
 UNITED)
 STATES DEPARTMENT OF LABOR)
) DECISION and ORDER

Respondent

Appeal of the Decision and Order Dismissing Claim and Order Denying Motion for Reconsideration of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Larry Davis, lay representative, Gary, Indiana, for claimant.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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:

Claimant appeals the Decision and Order Dismissing Claim and Order Denying Motion for Reconsideration (05-BLA-5124) of Administrative Law Judge Daniel J. Roketenetz 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).¹ The administrative law judge dismissed the claim after claimant failed to comply with an order directing him to specify the basis for his allegation that the administrative law judge

¹ Claimant filed his application for benefits on November 13, 2003. Director's Exhibit 2. The district director denied benefits and claimant requested a formal hearing. Director's Exhibits 20-22.

had engaged in illegal activity and because there was no evidence that claimant was a miner within the meaning of the Act. The administrative law judge subsequently denied claimant's motion for reconsideration because claimant raised no issues that were not fully considered in the administrative law judge's decision dismissing the claim. Order Denying Motion for Reconsideration at 1.

On appeal, claimant contends that the administrative law judge erred in dismissing his claim and in failing to award benefits. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's dismissal 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On January 27, 2005, claimant, through his lay representative, Mr. Davis, filed a document with the administrative law judge asserting that an attorney with the Office of the Solicitor, United States Department of Labor, paid the administrative law judge to ignore alleged flaws in the Department of Labor-sponsored medical examination. The administrative law judge, on January 28, 2005, ordered the parties to provide, by February 9, 2005, a sworn affidavit setting forth specific information relevant to the allegation and informed the parties that failure to comply with the order would result "in appropriate sanctions." Jan. 28, 2005 Order at 3. The attorney for the Solicitor responded by letter dated February 9, 2005 with a sworn statement specifically addressing the topics requested in the administrative law judge's order. Mr. Davis responded in an unsworn statement dated February 4, 2005, by repeating claimant's allegation. Subsequently, Mr. Davis submitted a February 28, 2005 sworn statement in which he did not address the allegation.

On February 24, 2005 the administrative law judge issued an order directing claimant to show cause, by March 10, 2005, why the claim should not be dismissed because the evidence did not show that claimant was a miner under the Act and because claimant failed to respond to the administrative law judge's order seeking specific information concerning the allegation of illegal activity. The administrative law judge warned claimant that "failure to comply with this Order will result in dismissal of this claim." Mar. 10, 2005 Order at 3. In a sworn statement dated March 17, 2005, claimant responded that he was a miner under the Act and requested that his case be remanded to the district director for a new medical examination.

The administrative law judge issued his Decision and Order dismissing the claim on March 28, 2005. He dismissed the claim pursuant to 20 C.F.R. §725.465(a)(2) because claimant failed to comply with lawful orders of the administrative law judge, and because the claim file did not reflect that claimant was a miner under the Act. Decision and Order Dismissing Claim at 2-6.

On appeal, claimant alleges that he was not required to respond to the administrative law judge's orders because the administrative law judge did not issue a subpoena, because the administrative law judge did not state that his orders were lawful, and because the administrative law judge did not comply with the requirements of 20 C.F.R. §725.477(b).² These contentions lack merit. Administrative law judges have the authority to issue subpoenas to compel the production of documents and the appearance of *witnesses*, 20 C.F.R. §725.351(b)(2),(3), but a subpoena is not required for an administrative law judge to issue an order directing the *parties* to provide relevant information to the administrative law judge. *See* 20 C.F.R. §725.351(b)(5); 29 C.F.R. §18.29(a). Additionally, the administrative law judge stated that his orders were "lawful." Decision and Order Dismissing Claim at 5. Further, the Decision and Order Dismissing Claim complies with 20 C.F.R. §725.477(b) as the administrative law judge set forth the parties, his findings of fact, and conclusions of law. Claimant's allegations are rejected.

Under the regulation governing dismissals for cause, "[t]he administrative law judge may, . . . on his or her own motion, dismiss a claim . . . [u]pon the failure of the claimant to comply with a lawful order of the administrative law judge." 20 C.F.R. §725.465(a)(2). The Board reviews an administrative law judge's decision to dismiss a claim under an abuse of discretion standard. *See Clevinger v. Regina Fuel Co.*, 8 BLR 1-1, 1-2 (1985).

Under the facts of this case, the administrative law judge did not abuse his discretion in dismissing the claim. *Clevinger*, 8 BLR at 1-2. Claimant failed to comply with the administrative law judge's orders to submit a sworn affidavit detailing the allegations of illegal activity. As the adjudication officer tasked with providing the parties in every case "a fair and impartial hearing," 29 C.F.R. §18.29(a); 20 C.F.R. §725.455(c), the administrative law judge had the authority to order the parties to provide specific information by sworn affidavit concerning the allegation that the administrative law judge had committed an illegal act. *See* 20 C.F.R. §725.351(b)(5); 29 C.F.R. §18.29(a). Upon claimant's failure to comply with the administrative law judge's order,

² Section 725.477(b) provides, in relevant part, that "a decision and order shall contain . . . the names of the parties, findings of fact, [and] conclusions of law" 20 C.F.R. §725.477(b).

the administrative law judge properly issued an Order to Show Cause as to why the claim should not be dismissed, and provided claimant a reasonable time to respond. 20 C.F.R. §725.465(c). When claimant did not properly respond to the Order to Show Cause, the administrative law judge acted within his discretion in dismissing the claim pursuant to 20 C.F.R. §725.465(a)(2). We therefore affirm the administrative law judge's order dismissing the claim.³

Because we affirm the dismissal of the claim on these grounds, we need not address claimant's contentions with respect to the new medical examination he seeks or that he is a miner under the Act.

Accordingly, the administrative law judge's Decision and Order Dismissing Claim and Order Denying Motion for Reconsideration are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

³ The administrative law judge has filed a motion requesting that a letter from the Office of Inspector General finding no merit in claimant's allegation be associated with the file in this matter. No response to the motion has been received. We grant the motion and hereby associate the letter with the Board's administrative file in this case.