

BRB No. 05-0974 BLA  
Case No. 04-BLA-5249

CALVIN HUNTER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DRUMMOND COMPANY,	)	DATE ISSUED: 02/09/2007
INCORPORATED	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	ORDER ON
Party-in-Interest	)	RECONSIDERATION

Employer has filed a motion for reconsideration requesting that the Board reconsider its Decision and Order, BRB No. 05-0974 BLA, issued on June 28, 2006, which vacated and remanded the Decision and Order Denying Benefits (04-BLA-5249) of Administrative Law Judge Jeffrey Tureck that was rendered on a claim arising under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). In the Board's decision, a majority panel vacated the administrative law judge's finding, pursuant to 20 C.F.R. §718.202(a), that claimant failed to establish the existence of pneumoconiosis. *Hunter v. Drummond Co.*, BRB No. 05-0974 BLA (June 28, 2006) (unpub.) (Smith, J., dissenting).

As the basis for its motion, employer submits that, in response to claimant's petition for review and brief, employer prepared a response brief that was inadvertently mailed to the Office of Administrative Law Judges as opposed to the Board's address. Employer further submits that it first became aware that the Board had not timely received its response brief when the Board issued its Decision and Order on June 28, 2006, wherein the Board noted employer's failure to respond to claimant's appeal. Due to the administrative error, employer requested that the Board reconsider its June 28, 2005 Decision and Order in light of employer's response brief.

Based on employer's submissions, we granted employer's request to accept its response brief, although filed out of time. By Order dated December 14, 2006, the Board notified the parties of employer's motion for reconsideration and our acceptance of

employer's response brief. *Hunter v. Drummond Co.*, BRB No. 05-0974 BLA (Order) (Dec. 14, 2006) (unpub.). The parties were given twenty days from receipt of the Board's Order to file briefs. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response to employer's motion for reconsideration. Employer has filed a reply brief, reiterating its argument that the administrative law judge properly denied benefits.

Although we have reviewed the arguments raised in employer's response brief and employer's reply brief as to why the administrative law judge's finding at Section 718.202(a) should be affirmed, we see no basis for vacating or modifying the Board's decision. Therefore, we grant employer's motion for reconsideration but deny the relief requested. 30 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(b), 802.407(a), 802.409.

SO ORDERED.

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REGINA C. McGRANERY  
Administrative Appeals Judge

I concur:

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BETTY JEAN HALL  
Administrative Appeals Judge

SMITH, Administrative Appeals Judge, dissenting:

For the reasons stated in the Board's decision, I would affirm the administrative law judge's denial of benefits based on his determination that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a).

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ROY P. SMITH  
Administrative Appeals Judge