

BRB No. 03-832 BLA
Case No. 02-BLA-05284

HAROLD. E. BETZ, Jr.)
) DATE ISSUED: January 22, 2004
 Claimant-Petitioner)
)
 v.)
)
 KOCHER COAL COMPANY)
)
 and)
)
 LACKAWANNA CASUALTY CO.)
)
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT)
 OF LABOR)
)
 Party-in-Interest) ORDER

Employer has filed a Motion to Quash claimant's appeal for failure to file a Petition for Review and brief in the captioned case.

On November 28, 2003, the Board issued an Order directing claimant to show cause why his appeal should not be dismissed for failure to comply with the requirements as to timely filing a Petition for Review and brief. 20 C.F.R. §§802.211, 802.218(b), 802.402(a).

Claimant responded by Motion dated January 5, 2004, requesting that the Board

remand this case to the District Director for modification proceedings.

The Board grants claimant's motion. This case is, therefore, dismissed and remanded to the Office of the District Director for modification proceedings. 20 C.F.R. §725.310 This case will be reinstated by the Board only if claimant 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.

Once the request for modification is processed by the district director, the case may be transferred to an administrative law judge for a hearing pursuant to the regulation. 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 administrative law judge erred in denying modification, a Notice of Appeal of the Order denying modification must be filed in addition to the request for reinstatement within thirty (30) days of the date the Order on modification is filed. 20 C.F.R. §802.205.

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.

In light of the above, employer's motion to quash is moot.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge