

BRB No. 06-0559 BLA

HARMON JAMES HARDIN)
)
 Claimant-Petitioner)
)
 v.)
)
 MARROWBONE DEVELOPMENT)
 COMPANY)
)
 and)
) DATE ISSUED: 01/30/2007
 WEST VIRGINIA CWP FUND)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Order of Dismissal of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Harmon James Hardin, Delbarton, West Virginia, *pro se*.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Order of Dismissal (05-BLA-5255) of Administrative Law Judge Jeffrey Tureck in a miner's 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). Claimant filed his application for benefits on

December 15, 2003. The district director denied benefits and claimant requested a hearing before the Office of Administrative Law Judges (OALJ).

The claim was referred to the OALJ where it was assigned to the administrative law judge. The administrative law judge issued a Notice of Hearing and Pre-Hearing Order on December 20, 2005, in which he stated that a hearing was scheduled for February 2, 2006. Claimant did not appear at the February 2, 2006 hearing. Employer therefore moved that the claim be dismissed for failure of claimant to attend the hearing, and requested that an Order to Show Cause be issued. Hearing Transcript at 4.

On February 3, 2006, the administrative law judge issued an Order directing claimant to show cause, by February 24, 2006, why his claim should not be dismissed because of his failure to attend the hearing scheduled on February 2, 2006. Claimant timely responded to the administrative law judge's Order to Show Cause in a letter dated February 8, 2006. In his letter, claimant explained that he did not appear at the hearing because he could not find a lawyer, because he did not want to undergo any further medical testing, and because it seemed that his claim had already been decided against him. Claimant's Letter, February 8, 2006.

In his Order of Dismissal, the administrative law judge construed claimant's letter as an indication that claimant did not think it was worth the effort to attend the hearing. Based on this construction, the administrative law judge found that claimant did not establish good cause for his failure to attend the hearing. Accordingly, the administrative law judge dismissed the claim.

On appeal, claimant contends that the administrative law judge erred in dismissing his claim. Employer responds, urging affirmance of the administrative law judge's Order of Dismissal. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176, 1-177 (1989). The Board reviews the administrative law judge's procedural rulings for abuse of discretion. *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-55 (2004)(*en banc*).

Under the regulation governing dismissals for cause, "[t]he administrative law judge may, at the request of any party . . . dismiss a claim . . . [u]pon the failure of the claimant or his or her representative to attend a hearing without good cause." 20 C.F.R. §725.465(a)(1). Although employer is correct that the administrative law judge exercises broad discretion in determining whether to dismiss a claim, *see Clevinger v. Regina Fuel Co.*, 8 BLR 1-1, 1-2 (1985), claimant's letter on appeal challenges the administrative law judge's interpretation of his reasons for not attending the hearing:

I'm writing this letter in regard to the letter from the law judges [sic] ruling to dismiss my case. I'm afraid the judge got the wrong impression I do feel that I have a lot to fight for because I was never sick until I started working in the coal mines. I have never seen a well day! I just received so many letters from the company lawyers it just seemed hopeless. So I'm writing this letter in protest against the law judges [sic] decision to dismiss my case.

Claimant's Letter, March 17, 2006.

In light of this *pro se* appeal, and in light of claimant's letter that the administrative law judge may have misconstrued claimant's explanation for his failure to attend the hearing, we vacate the administrative law judge's Order of Dismissal and remand this case for the administrative law judge to reconsider employer's motion to dismiss, in conjunction with claimant's February 8, 2006 response to the administrative law judge's Order to Show Cause and claimant's letter of appeal dated March 17, 2006.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge