

BRB No. 92-0372 BLA

DELPHIA MURPHY )  
(Widow of JAMES MURPHY) )  
)  
Claimant-Respondent )  
)  
v. )  
)  
JUSTICE & MURPHY COAL COMPANY )  
)  
and )  
)  
OLD REPUBLIC INSURANCE ) DATE ISSUED:  
COMPANY )  
)  
Employer/Carrier- )  
Petitioners )  
) )  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
) )  
Party-In-Interest ) DECISION and ORDER  
ON RECONSIDERATION

Employer has timely filed a Motion for Reconsideration of the Board's Decision and Order in *Murphy v. Justice & Murphy Coal Co.*, BRB No. 92-0372 BLA (May 13, 1994)(unpub.). See 20 C.F.R. §802.407(a). In *Murphy*, the Board affirmed the administrative law judge's findings pursuant to 20 C.F.R. §§727.203(a)(1), 727.203(b)(4) and the award of benefits. See *Murphy, supra*. In its motion for reconsideration, employer requests that the Board reconsider its affirmance of the administrative law judge's finding pursuant to Section 727.203(a)(1) in light of the

United States Supreme Court's holding in *Director, OWCP v. Greenwich Collieries* [*Ondecko*], U.S. , 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). Claimant responds, urging that the motion be denied because employer failed to preserve the issue of invocation pursuant to Section 727.203(a)(1).<sup>1</sup>

In his initial Decision and Order, the administrative law judge concluded that the x-ray evidence established invocation of the interim presumption pursuant to Section 727.203(a)(1) by applying the true doubt principle. The administrative law judge's finding of invocation pursuant to subsection (a)(1) was affirmed twice by the Board on appeal. See *Murphy v. Justice & Murphy Coal Co.*, BRB No. 84-587 BLA (Oct. 28, 1987)(unpub.); *Murphy, supra*.

Subsequent to the Board's 1994 Decision and Order, the Supreme Court held in *Ondecko*, that the true doubt rule violates Section 7(c) of the Administrative Procedure Act and may not be applied in weighing the evidence to aid a claimant in meeting his burden of proof. See *Ondecko, supra*. Thus, we grant employer's motion for reconsideration, vacate the administrative law judge's finding pursuant to subsection (a)(1), and remand the case for reconsideration.

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<sup>1</sup>Claimant's argument in response is without merit as employer contested the administrative law judge's subsection (a)(1) finding in both appeals to the Board.

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge