BRB No. 02-0516 BLA

SIDNEY E. STILTNER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHADY LANE COAL CORPORATION	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Summary Decision and Order Denial of Request for Modification of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Sidney E. Stiltner, Grundy, Virginia, *pro se*.

Steven H. Theisen (Theisen & Lingle, P.C.), Richmond, Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the aid of counsel,[1] the Summary Decision and Order Denial of Request for Modification (02-BLA-0178) of Administrative Law Judge Richard T. Stansell-Gamm denying benefits 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

[1] Claimant's appeal was filed on claimant's behalf by Ron Carson of Stone Mountain Health Services of Vansant, Virginia, but Mr. Carson is not representing claimant on appeal. *See* 20 C.F.R. §§802.211(e), 802.220; *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995).

Act).[2] The administrative law judge found that claimant's request for modification of the denial of benefits in the instant claim was untimely. Accordingly, benefits were denied.

On appeal, claimant contends that he is entitled to benefits. Employer responds, urging that the administrative law judge's Summary Decision and Order Denial of Request for Modification be affirmed. The Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, has not responded to this appeal.

In an appeal filed by a claimant without the aid of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence, *see Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1985). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

[2] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Claimant may request modification of the denial of a claim within one year pursuant to Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §922, as incorporated into the Act by 30 U.S.C. §932(a), and as implemented by 20 C.F.R. §725.310 (2000), *see* 20 C.F.R. §725.2(c). In a Decision and Order issued on September 13, 2000, the Board affirmed the denial of benefits in the instant claim, Director's Exhibit 59. *Stiltner v. Shady Lane Coal Co.*, BRB No. 99-1264 BLA (Sep. 13, 2000)(unpub.).[3] By letter dated September 27, 2001, claimant filed a request for modification. Director's Exhibit 60. The administrative law judge issued an Order to Show Cause on March 22, 2002, as to why claimant's request for modification should not be dismissed as untimely filed. In response, claimant's lay representative stated that "it was an error on our part" and "not our client's fault" that claimant missed the date of filing for modification and asked the administrative law judge that he "not penalize" claimant "due to our error." March 26, 2002 Letter from Claimant's Lay Representative Responding to Administrative Law Judge's Order to Show Cause. The administrative law judge found, as conceded by claimant, that the request for modification was untimely filed. 20 C.F.R. §725.310 (2000). The administrative law judge concluded, therefore, in light of 20 C.F.R. §725.310 (2000), which requires that a request for modification be filed before one year after the denial of a claim, and in light of claimant's concession as to the untimeliness of the modification request, that no genuine issue of a material fact exists, and summarily denied claimant's request for modification without holding an evidentiary hearing, citing 20 C.F.R. §18.41(a)(1). Summary Decision and Order at 2. This was proper. *See* Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §922, as incorporated into the Act by 30 U.S.C. §932(a), and as implemented by 20 C.F.R. §725.310 (2000); *Betty B Coal Co. v. Director, OWCP [Stanley]*, 194 F.3d 491, 22 BLR 2-1 (4th Cir. 1999); *see also Stacy v. Cheyenne Coal Co.*, 21 BLR 1-111 (1999).[4]

[3] Claimant originally filed a claim on October 31, 1984, which was ultimately denied on November 13, 1989, Director's Exhibit 39. Claimant filed a second, duplicate claim on November 12, 1993, which was ultimately denied by the district director on May 11, 1994, Director's Exhibit 40. Claimant filed the instant, duplicate claim on September 22, 1997, Director's Exhibit 1, and in a Decision and Order issued on August 27, 1999, Administrative Law Judge Thomas F. Phalen, Jr., denied benefits, Director's Exhibit 53. Claimant appealed and the Board affirmed the denial of benefits, Director's Exhibit 59. *Stiltner v. Shady Lane Coal Co.*, BRB No. 99-1264 BLA (Sep. 13, 2000)(unpub.).

[4] The regulation at 20 C.F.R. §725.311(c)(2000), as revised at 20 C.F.R. §725.311(d), cited by the administrative law judge is not applicable to the statutory one year period allotted for the filing of a request for modification. *See* Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §922, as incorporated into the Act by 30 U.S.C. §932(a), and as implemented by 20 C.F.R. §725.310 (2000); *see generally Betty B Coal Co. v. Director, OWCP [Stanley]*, 194 F.3d 491, 22 BLR 2-1 (4th Cir. 1999); *Stacy v. Cheyenne Coal Co.*, 21 BLR 1-111 (1999).

Additionally, citing *Stacy*, *supra*, the administrative law judge held that, because the filing of an untimely motion for modification does not constitute a new claim and because claimant's submission of new evidence did not include the requisite claim form to initiate the duplicate claim process pursuant to 20 C.F.R. §725.309 (2000), *see* 20 C.F.R. §725.2(c), he had no authority to consider claimant's submission of new evidence as a duplicate claim. Summary Decision and Order at 3 n. 2; *see* 20 C.F.R. §725.305.[5]

[5] The regulations provide that the filing of a signed statement indicating an intention to claim benefits may be considered to be the filing of a claim under certain circumstances. 20 C.F.R. §725.305. Upon receiving such a written statement, the Department of Labor is required to notify the signer, in writing, that to be considered, the claim must be executed by claimant on a prescribed form and filed with the Department of Labor within six months of the mailing of the notice. 20 C.F.R. §725.305(b). Although the Department of Labor provided claimant with such notification, *see* Director's Exhibit 61, and the administrative law judge provided claimant with such notification in his Order to Show Cause, there is no indication that claimant filed the prescribed form. The regulations provide that claims based upon written statements indicating an intention to claim benefits that are not perfected by filing the prescribed form "**shall not be processed**." 20 C.F.R. §725.305(d) (emphasis added). Thus, as the administrative law judge held, there was no claim before the administrative law judge to adjudicate.

Claimant may file a duplicate claim at any of the various district offices of the Social Security Administration, or any of the various offices of the Department of Labor

authorized to accept claims. *See* 20 C.F.R. §725.303.

Finally, the Act and regulations mandate that an administrative law judge hold a hearing on any claim, including a request for modification, whenever a party requests such a hearing, unless such hearing is waived by the parties or a party requests summary judgment. *See Pukas v. Schuylkill Contracting Co.*, 22 BLR 1-69 (2000).[6] However, inasmuch as the administrative law judge properly held that he had no authority to reconsider or alter the denial of benefits on modification because claimant's request for modification was untimely and properly held that there was no duplicate claim before him to adjudicate, the administrative law judge properly issued his final summary decision without the need to hold an evidentiary hearing. *See* 20 C.F.R. §18.41(a)(1).

[6] Section 22 of the Longshore and Harbor Workers' Compensation Act [LHWCA] specifies that modification requests are to be reviewed "in accordance with the procedure prescribed in respect of claims in section [19 of the LHWCA, 33 U.S.C. §919]," 33 U.S.C. §922, as incorporated into the Act by 30 U.S.C. §932(a); *accord* 20 C.F.R. §725.310(b)("modification proceedings shall be conducted in accordance with the provisions of [20 C.F.R. Part 725, setting forth the procedures for the adjudication of black lung claims] as appropriate"). Section 19 of the LHWCA provides for a hearing whenever a party requests such a hearing, 33 U.S.C. §919(c), as incorporated into the Act by 30 U.S.C. §932(a). Thus, 30 U.S.C. §932(a), as implemented by 20 C.F.R. §§725.450, 725.451, 725.421(a), mandates that an administrative law judge hold a hearing on any claim filed with the district director whenever a party requests such a hearing, unless waived by the parties, *see* 20 C.F.R. §725.461(a), or a party requests summary judgement, *see* 20 C.F.R. §725.452(c). *See also* 20 C.F.R. §725.310(c).

Accordingly, the administrative law judge's Summary Decision and Order Denial of Request for Modification is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge