

BRB No. 04-182 BLA
Case No. 03-BLA-0079

EDWARD OTTO)
)
Claimant-Petitioner)
)
v.)
)
SPLIT VEIN COAL COMPANY, INC.,)
)
and)
)
LACKAWANNA CASUALTY COMPANY) DATE ISSUED: 3/24/04
)
Employer/Carrier-)
Respondent)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) ORDER

By Order dated February 6, 2004, the Board directed claimant to show cause within ten (10) days of receipt of the Order why his appeal should not be dismissed for failure to comply with the requirements as to the timely filing of the Petition for Review and brief. 20 C.F.R. §§802.217(d), 802.218(b), 802.402(a).

On March 5, 2004, claimant filed a request for modification. In support of the request counsel states that claimant's respiratory condition is worsening and that claimant is desirous of pursuing modification.

Accordingly, this appeal is dismissed and the case remanded to the district director for consideration of the request for modification. 20 C.F.R. §802.301.

Once a final decision on the petition for modification is issued by an administrative law judge, the case may be reinstated on the Board's docket if modification is denied. The case will be reinstated by the Board only if the petitioner requests reinstatement. The request for reinstatement must be filed with the Board within

thirty (30) days of the date the decision on modification is issued and must be identified by the Board's docket number, BRB No. 04-182 BLA. If reinstatement is requested, the Board will consider only the issues raised in the appeal of the Decision and Order Denying Benefits issued on October 9, 2003.

After claimant's 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 regulations. In the event the administrative law judge denies modification and the petitioner 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 decision denying modification must be filed, in addition to the request for reinstatement. The Notice of Appeal must also be filed with the Board within thirty (30) days of the date on which the decision on modification is filed. 20 C.F.R. §802.205. The appeal of the decision on modification will be assigned a new docket number and will be consolidated with the appeal, BRB No. 04-182 BLA.

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 filed. 20 C.F.R. §§802.205, 802.301(c).

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge