

BRB No. 05-0192 BLA
Case No. 02-BLA-5433

JACK FLEMING)

Claimant-Petitioner)

v.)

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR)

Respondent)

DATE ISSUED: March 9, 2005

ORDER

The Board has received the Director's request to dismiss the captioned appeal and remand the case to the Office of the District Director for payment of benefits. The Director states that the administrative law judge erroneously found that the miner had failed to establish that he was totally disabled due to coal workers' pneumoconiosis. The Director further states that after review of the record and applicable law that no basis exists for denying claimant's benefits.

Accordingly, the Board accepts the Director's Motion to Remand for Payment of Benefits as a withdrawal of controversion of all issues. See *Pendley v. Director*, OWCP, 13 BLR 1-23 (1989). Accordingly, we grant the Director's motion and remand the case to the district director for payment of benefits to claimant.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge