

BRB No. 99-1100 BLA

HARRY W. ECKERT )  
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 Claimant-Petitioner ) DATE ISSUED:  
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 v. )  
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 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, )  
 UNITED STATES DEPARTMENT OF )  
 LABOR )  
 Respondent ) DECISION and ORDER

Appeal of the Decision and Order on Modification Denying Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Helen H. Cox (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Modification Denying Benefits (99-BLA-0543) of Administrative Law Judge Ralph A. Romano 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 Act). The procedural history of this case, in pertinent part, is as follows. Claimant filed the instant duplicate claim for benefits on February 8, 1996. Director's Exhibit 1. The claim was denied by Administrative Law Judge Paul H. Teitler on April 2, 1997 inasmuch as Judge Teitler found that the newly submitted evidence failed to establish total disability due to pneumoconiosis, the element of entitlement previously adjudicated against claimant. Thus, Judge Teitler concluded that claimant had not established a material change in conditions since the prior denial, and accordingly, denied benefits. On June 12, 1998, the Board affirmed Judge Teitler's denial of benefits.

*Eckert v. Director, OWCP*, BRB No. 97-1077 BLA (June 12, 1998) (unpublished).

On September 28, 1998, claimant requested modification pursuant to 20 C.F.R. §725.310. Subsequent to the district director's denial of modification on December 23, 1998, claimant requested a hearing. On March 23, 1999, Administrative Law Judge Ralph A. Romano (the administrative law judge) issued an order directing the parties to show cause why a hearing should be held in claimant's modification request. Claimant responded, renewing his request for a hearing on modification. On April 16, 1999, the administrative law judge issued an order concluding that a hearing was not necessary, and directing the parties to submit additional evidence by May 20, 1999 and make additional argument no later than 30 days thereafter. On July 13, 1999, the administrative law judge issued the Decision and Order on Modification Denying Benefits, which is the subject of this appeal. The administrative law judge found that the newly submitted evidence failed to establish a change in conditions on the issue of total disability, the only issue previously adjudicated against claimant. The administrative law judge further found that claimant failed to establish a mistake in a determination of fact pursuant to 20 C.F.R. § 725.310. Accordingly, the administrative law judge denied claimant's request for modification.

On appeal, claimant contends that the administrative law judge erred in denying claimant the right to a hearing on modification. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand, agreeing that claimant is entitled to a hearing on modification, and arguing that the case should be remanded to the administrative law judge for that purpose. Claimant has filed a letter, joining in the Director's Motion to Remand.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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)("[m]odification proceeding 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"); *see Robbins v. Cyprus Cumberland Coal Co.*, 146 F.3d 425, 21 BLR 2-495 (6th Cir. 1998). Section 19 of the LHWCA, in turn, provides for a hearing to be held whenever a party so requests. 33 U.S.C. §919(c).

In addition to the statute, the regulations addressing black lung claims provide that “[i]n any claim for which a formal hearing is requested or ordered, ..., the [district director] shall refer the claim to the Office of Administrative Law Judges for a hearing.” 20 C.F.R. §725.421(a). The regulations also provide that “[a]ny party to a claim (*see* §725.360) shall have a right to a hearing concerning any contested issue of fact or law unresolved by the [district director].” 20 C.F.R. §725.450.

Thus, as both claimant and the Director contend, 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, including a request for modification filed with the district director, whenever a party requests such a hearing, unless such hearing is waived by the parties, *see* 20 C.F.R. §725.461(a), or a party requests summary judgment, *see* 20 C.F.R. §725.452(c). *See also* 20 C.F.R. §725.310(c); *Betty B Coal Co. v. Director, OWCP [Stanley]*, 194 F.3d 491, 498, 22 BLR 2-1, 2-12-13 (4th Cir. 1999); *Robbins, supra; Cunningham v. Island Creek Coal Co.*, 144 F.3d 388, 390, 21 BLR 2-384, 2-388-89 (6th Cir. 1998); *Arnold v. Peabody Coal Co.*, 41 F.3d 1203, 1208-09, 19 BLR 2-22, 2-33 (7th Cir. 1994); *Pukas v. Schuylkill Contracting Company*, BLR , BRB No. 99-0786 BLA (May 10, 2000); *Worrell v. Consolidation Coal Co.*, 8 BLR 1-158, 1-160 (1985). Consequently, we vacate the administrative law judge’s Decision and Order and remand the case to the administrative law judge to conduct a hearing *de novo* on claimant’s request for modification pursuant to Section 725.310.<sup>1</sup> *See Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995).

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<sup>1</sup>As noted by the Director in his Motion to Remand, both claimant and the Director on remand will have the opportunity to submit additional evidence up to 20 days prior to the hearing. 20 C.F.R. § 725.456.

Accordingly, the administrative law judge's Decision and Order on Modification Denying Benefits is vacated and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge