

BRB No. 04-0788 BLA

ROY R. HALL)	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED: 05/13/2005
)	
DOMINION COAL CORPORATION)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Second Remand Awarding Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Roy R. Hall, Big Rock, Virginia, *pro se*.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Second Remand Awarding Benefits (1999-BLA-01340) of Administrative Law Judge Daniel F. Sutton 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). This case is before the Board for the fourth time. Previously, the Board discussed fully this claim's procedural history. *Hall v. Dominion Coal Corp.*, BRB No. 02-0861 BLA, slip op. at 2-5 (Aug. 7, 2003)(unpub.). Upon review of employer's appeal, the Board vacated the award of benefits and remanded the case for further

consideration. On remand, the administrative law judge again awarded benefits based on the filing date of the claim. We now focus only on those procedural aspects relevant to the issues raised on appeal of the administrative law judge's decision to grant claimant's request for modification and award benefits.

On appeal, employer contends that the administrative law judge erred in failing to rule on its Motion to Reopen the Record. Employer also argues that the administrative law judge erred in his weighing of the medical opinion evidence. Employer argues, therefore, that the administrative law judge's decision awarding benefits should be vacated and the case should be remanded and the record reopened for the development of additional medical evidence. Employer also requests that the claim be assigned to a different administrative law judge on remand. Claimant responds, urging affirmance of the award of benefits and challenging employer's assertion that reopening of the record in this case is warranted. The Director, Office of Workers' Compensation Programs (the Director), has not participated in this appeal. In reply, employer reiterates its contentions on appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon the 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).

Employer challenges the administrative law judge's decision on the ground of his failure to rule on its motion to reopen the record. Our review of the contents of the file in this case reflects that, on October 23, 2003, while the case was pending on remand, employer submitted three pleadings entitled: "Motion for Leave to File a Brief on Remand;" "Employer's Brief on Remand;" and "Employer's Motion to Reopen the Record and to Remand the Claim to the District Director for Development of Further Medical Evidence." Unmarked Exhibit; *see* Employer's Brief at 10. On December 9, 2003, the administrative law judge issued an Order granting claimant's unopposed request, by letter dated November 11, 2003, that the parties be provided an opportunity to submit written comments relative to the August 7, 2003, decision by the Board remanding the case. *See* Decision and Order on Second Remand at 6. In that Order, however, the administrative law judge did not acknowledge receipt of employer's October 23, 2003, submissions, which were date-stamped October 27, 2003, by the Office of Administrative Law Judges. In his Decision and Order on Second Remand, however, the administrative law judge acknowledged that he timely received briefs on remand from claimant and employer. Decision and Order on Second Remand at 6. Therein, the administrative law judge noted that employer had stated it had previously filed a "motion for leave to file a brief on remand[,] together with a brief," which apparently had been overlooked when the pleadings were initially filed, and that employer had refiled its "motion and brief on remand" subsequent to the issuance of the administrative

law judge's December 9, 2003, Order.¹ Decision and Order on Second Remand at 6, n. 2. In addition, the administrative law judge stated that the refiled motion and brief had been "fully considered" in his current decision. *Id.*

A review of the administrative law judge's decision reveals no discussion of employer's motion regarding reopening the record. The administrative law judge should have addressed the motion specifically at some point in his Decision and Order in order to satisfy the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a). The administrative law judge's failure to do so necessitates remand as the APA requires that every adjudicatory decision be accompanied by a statement of findings of fact and conclusions of law and the basis therefore on all material issues of fact, law, or discretion presented in the record. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Consequently, we vacate the administrative law judge's findings pursuant to Section 718.204(b) and remand the case for the administrative law judge to consider and rule on employer's outstanding motion. *See Selak v. Wyoming Pocahontas Land Co.*, 21 BLR 1-173 (1999)(*en banc*); *see also Stiltner v. Wellmore Coal Corp.*, 22 BLR 1-37 (2000)(*en banc*). Additionally, in light of our remand instructions, we decline to address employer's allegations of error regarding the administrative law judge's findings on the merits of entitlement.

Lastly, employer requests that the Board require that this case be reassigned to a new administrative law judge on remand "in order to obtain a 'fresh perspective' on the claim." Employer's Brief at 20. However, because employer has not demonstrated any bias or prejudice on the part of the administrative law judge, employer's request is denied. *See Cochran v. Consolidation Coal Co.*, 16 BLR 1-101, 1-108 (1992).

¹ Employer avers that it filed the motion to reopen the record on October 23, 2003, and renewed its motion on December 23, 2003. Employer's Brief at 10

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge