BRB Nos. 09-0119 BLA
and 09-0119 BLA-A

M.R.	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
KARST ROBBINS COAL COMPANY	)	
	)	
and	)	
	)	
BITUMINOUS CASUALTY CORPORATION	)	DATE ISSUED: 10/21/2009
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

M.R., New Market, Tennessee, *pro se*.

W. William Prochot (Greenberg Traurig, LLP), Washington, D.C., for carrier.

Michelle S. Gerdano (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank James, Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel,[1] and carrier cross-appeals, the Decision and Order Denying Benefits (08-BLA-5210) of Administrative Law Judge Paul C. Johnson, Jr., rendered 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*. In a Decision and Order dated September 26, 2008, the administrative law judge initially denied carrier's motion to be dismissed as the responsible carrier, and to rescind its insurance policy with Karst Robbins Coal Company. Reviewing the claim for benefits, the administrative law judge noted that claimant submitted an application for benefits on May 22, 2006, which the administrative law judge determined was claimant's third claim, following the final denial of two earlier claims. Specifically, the administrative law judge noted that claimant's first claim, filed on October 6, 1983, was denied on July 30, 1996. Director's Exhibit 1. The administrative law judge further found that claimant's second claim, filed on September 23, 2002, was denied by the district director on February 19, 2004 because, although claimant established the existence of totally disabling pneumoconiosis, he failed to establish that his pneumoconiosis arose out of coal mine employment. Director's Exhibit 2. The administrative law judge also noted that claimant filed a request for modification of the denial on November 18, 2004, which was denied by the district director on April 5, 2005. Treating the current claim as a subsequent claim in which claimant must demonstrate a change in the condition of entitlement that was decided against him in his 2002 claim, the administrative law judge found that the issue of whether claimant's pneumoconiosis was caused by coal mine employment is not a condition that can change over time in the absence of additional coal dust exposure. The administrative law judge therefore concluded that, because claimant had not returned to coal mine employment since the prior denial of benefits, he could not show that the condition of entitlement previously adjudicated against him had changed, as required by 20 C.F.R. §725.309(d). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to

[1] Jerry Murphree, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Murphree is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

vacate the denial of benefits and remand the case for further consideration. The Director contends that claimant's September 23, 2002 subsequent claim is still pending. Specifically, the Director argues that there remains an outstanding request by claimant for modification of the denial of his 2002 claim. Consequently, the Director asserts that the current claim, filed in May 2006, does not constitute a third subsequent claim, but rather, is a claim that merges with claimant's still-pending 2002 claim. Carrier responds, urging the Board to deny the Director's request for a remand, and to affirm the denial of benefits. Carrier also cross-appeals, contending that the administrative law judge erred in denying its motion to be dismissed as the responsible carrier and to rescind its insurance policy with employer, Karst Robbins Coal Company. Employer has not filed a brief in this appeal. The Director filed a brief in response to carrier's arguments raised on cross-appeal. Carrier filed a reply brief to the Director's response.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co*., 12 BLR 1-176, 1-177 (1989). 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). The Board reviews the administrative law judge's procedural rulings for abuse of discretion. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(*en banc*).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

We first address the Director's contention that claimant's 2002 subsequent claim is still pending, and that, therefore, the administrative law judge erred in adjudicating claimant's 2006 claim as an independent subsequent claim. Director's Response to Claimant at 1. For the reasons set forth below, we agree with the Director.

Claimant filed a subsequent claim on September 23, 2002.[2] Director's Exhibit 2. The district director denied the claim on February 19, 2004, on the grounds that

[2] Claimant filed his initial claim for benefits on October 6, 1983. The district director denied that claim on January 19, 1984, and denied claimant's request for modification on March 16, 1984. Director's Exhibit 1. Claimant requested a hearing, and in a decision dated October 11, 1989, Administrative Law Judge E. Earl Thomas

claimant's disabling pneumoconiosis did not arise out of coal mine employment, but was instead due to histoplasmosis.[3] Director's Exhibit 2.

On November 18, 2004, claimant, through counsel, submitted another application for benefits, together with a cover letter stating, in pertinent part:

> Enclosed is a black lung application and an appointment of representative form which my office is submitting on behalf of the above-named claimant.
>
> I am also enclosing a selection of examining provider form signed and completed by the claimant. Please schedule an appointment with the requested doctor as soon as possible.
>
> If there is a present case pending on this claim, please do not file a modification; simply return the application.

Director's Exhibit 2. The district director treated this application as claimant's request for modification, but denied the request on April 5, 2005. *See* 20 C.F.R. §725.310; Director's Exhibit 2. By letter dated July 5, 2005, claimant submitted another black lung benefits application form to the district director, together with an identically-worded letter from his counsel again concluding: "If there is a present case pending on this claim, please do not file a modification; simply return the application." Director's Exhibit 2. However, instead of treating claimant's letter and application as a request for

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denied benefits because claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, pursuant to 20 C.F.R. §718.202(a)(1)-(4). Director's Exhibit 1. Pursuant to claimant's appeal, the Board affirmed Judge Thomas' denial of benefits. [*M.R.*] *v. Karst-Robbins Machine Shop, Inc.*, BRB No. 90-0140 BLA (July 30, 1991) (unpub.). The Board subsequently denied claimant's motion for reconsideration. [*M.R.*] *v. Karst-Robbins Machine Shop, Inc.*, BRB No. 90-0140 BLA (October 9, 1991) (Order) (unpub.). Claimant then appealed to the United States Court of Appeals for the Sixth Circuit, which dismissed the appeal for want of prosecution on December 12, 1991. Director's Exhibit 1. No further action was taken on claimant's initial claim. On September 23, 2002, claimant filed a subsequent claim for benefits. Director's Exhibit 2.

[3] The district director credited claimant with eight years and ten months of coal mine employment. Thus, claimant did not qualify for the presumption that his pneumoconiosis arose out of coal mine employment, pursuant to 20 C.F.R. §718.203(b). Director's Exhibit 2.

modification, as it had with the prior request, the district director returned claimant's application for benefits, stating:

> As indicated in your letter dated July 5, 2005, you do not want to file a modification request. Therefore, the application from Mr. Rice, along with the other documents, are being returned to you.

Director's Exhibit 2.

The Director asserts that the district director failed to recognize that claimant's July 5, 2005 letter constituted a request for modification. The Director maintains that, because claimant's July 5, 2005 letter and benefits application were filed within one year of the April 5, 2005 denial of modification, they should have been treated as a second request for modification of claimant's September 23, 2002, subsequent claim. Director's Response to Claimant at 2. The Director explains that, because claimant's July 5, 2005 request for modification was not acted upon by the district director, claimant's September 23, 2002 claim remained viable. Director's Response to Claimant at 2. Consequently, the Director asserts that the administrative law judge incorrectly determined that claimant's May 22, 2006 claim constituted an independent subsequent claim. Carrier responds, urging the Board to reject the Director's arguments. We are persuaded by the Director's position.

Initially, we reject carrier's contention that because the Director did not raise this argument before the administrative law judge, the Director waived the opportunity to raise it before the Board on appeal. Employer's Brief at 20. The Director has standing to ensure the proper enforcement and lawful administration of the Black Lung program, *see* 20 C.F.R. §725.456(d); *Pendley v. Director, OWCP*, 13 BLR 1-23 (1989)(*en banc order*); *Capers v. The Youghiogheny and Ohio Coal Co.*, 6 BLR 1-1234, 1-1237 (1984), especially in *pro se* cases, as here. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-87 (1994). Moreover, waiver is a flexible rule that is "prudential and not jurisdictional." *Youghiogheny and Ohio Coal Co. v. Milliken*, 200 F.3d 942, 955, 22 BLR 2-46, 2-68 (6th Cir. 1999). Here, the Director, in his role as Party-in-Interest, has properly informed the Board that claimant's previous claim was incorrectly handled by the district director, and that this error affects the procedural posture of the current claim. 20 C.F.R. §802.201(a); *Slone v. Wolf Creek Collieries, Inc.*, 10 BLR 1-66 (1987); *Capers*, 6 BLR at 1-1237 n.4. In addition, the fact that claimant did not previously object to the district director's rejection of his request for modification, or to the administrative law judge's improper designation of his claim, is immaterial, given that the Director has properly raised the issue at this juncture. *See Consolidation Coal Co. v. Swiger*, 98 F. App'x. 227, 237 (4th Cir. May 11, 2004).

Having thus considered the Director's argument to be properly before us, we agree with the Director that, contrary to carrier's assertion, the district director failed to recognize that claimant's July 5, 2005 letter constituted a request for modification. Director's Response to Claimant at 2. "[T]he standard for what constitutes a request for modification is very low," *Milliken*, 200 F.3d 942 at 953, 22 BLR at 2-64, and "'need not meet formal criteria.'" *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 181, 21 BLR 2-545, 2-555 (4th Cir. 1999), *quoting I.T.O. Corp. of Virginia v. Pettus*, 73 F.3d 523, 526 (4th Cir. 1996). Rather, "[a]lmost any sort of correspondence from the claimant" will suffice, *Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497, 22 BLR 2-1, 2-11 (4th Cir. 1999), so long as it is timely and evinces an intent to pursue the claim. *See Fireman's Fund Ins. Co. v. Bergeron*, 493 F.2d 545, 547 (5th Cir. 1974); *Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161, 1-163 n.2. (1988).

Here, claimant's July 5, 2005 letter specifically asks, "[i]f there is a present case pending on this claim, please do not file a modification; simply return the application." Director's Exhibit 2. As the Director contends, from this language the district director erroneously concluded that claimant did "not want to file a modification request." Director's Response to Claimant at 2. We agree with the Director that claimant's letter indicates his clear intent that the district director was only to return the benefits application if there was already a case pending. In addition, claimant's letter was identically-worded to his prior letter, which the district director properly recognized, and acted upon, as a modification request, and the district director offered no justification for failing to treat the second request accordingly.

Therefore, as claimant's July 5, 2005 letter constituted a request for modification of the denial of his September 23, 2002 subsequent claim, claimant's 2002 claim is still pending. Because claimant's 2002 claim is still pending, his 2006 claim merges with the 2002 claim. *See* 20 C.F.R. §725.309(d). Consequently, we vacate both the administrative law judge's finding that claimant's May 22, 2006 claim constituted an independent subsequent claim, as well as the denial of benefits, and remand this case to the district director for the initiation of modification proceedings on claimant's 2002 subsequent claim.[4] Claimant's first claim was denied on the grounds that claimant did not establish the existence of pneumoconiosis. Director's Exhibit 1. Thus, pneumoconiosis is the applicable condition of entitlement that claimant is now required to establish, with new evidence, in order to obtain review of the merits of his claim. 20

[4] We reject carrier's argument that the initiation of modification proceedings at this juncture would violate carrier's due process rights by precluding development of proof under the proper standard. Carrier's Brief at 21-22. Carrier will have ample opportunity to submit additional evidence at the district director level if it so chooses. *See* 20 C.F.R. §§725.310(b), 725.414.

C.F.R. §725.309(d). The threshold inquiry is not, as the administrative law judge found, whether claimant's pneumoconiosis arose out of coal mine employment.

We next address carrier's contentions raised on cross-appeal, that the administrative law judge erred in denying its motion to be dismissed as the responsible carrier and to rescind its insurance policy with Karst Robbins Coal Company.[5] Carrier's Brief at 7-18. In denying carrier's motion to be dismissed as the responsible carrier, the administrative law judge found that, contrary to carrier's contentions, principles of collateral estoppel do not preclude relitigation of the responsible operator issue. Decision and Order at 3. Examining the evidence of record, the administrative law judge concluded that claimant was, in fact, an employee of Karst Robbins Coal Company, Inc., not Karst Robbins Machine Shop. Decision and Order at 5-7. The administrative law judge further found that, because claimant was employed by Karst Robbins Coal Company, and it is undisputed that carrier's contract with Karst Robbins Coal Company provided insurance coverage for Karst Robbins Coal Company's employees, the Department of Labor was not required to investigate whether Karst Robbins Machine Shop also carried workers' compensation insurance through a separate insurer. Decision and Order at 3; Carrier's Brief at 5. Thus, the administrative law judge rejected carrier's assertion that liability for the payment of benefits must be transferred to the Black Lung Disability Trust Fund (the Trust Fund), based on the Department's alleged failure to investigate other potentially liable carriers. Decision and Order at 8. Having rejected carrier's arguments, the administrative law judge denied carrier's motion to be dismissed.

We initially reject carrier's assertion that the administrative law judge erred in finding that collateral estoppel does not preclude relitigation of the responsible operator, or responsible carrier, issues. Carrier's Brief at 8-10; Carrier's Reply Brief at 8-9. Specifically, carrier asserts that in connection with claimant's 1983 initial claim, Administrative Law Judge E. Earl Thomas found Karst Robbins Machine Shop to be the responsible operator, but ultimately determined that claimant failed to establish his entitlement to benefits. Carrier's Brief at 8-10; Carrier's Reply Brief at 8-9. Claimant appealed to the Board, and, during the pendency of the appeal, Karst Robbins Coal Company moved to be dismissed as a party. By Order dated November 19, 1990, the Board granted Karst Robbins Coal Company's motion to be dismissed as the responsible operator, and ordered that only Karst Robbins Machine Shop was to remain listed in the case caption as the responsible operator. Director's Exhibit 1. Subsequently, in a decision and order issued on July 30, 1991, the Board affirmed the administrative law

[5] On May 20, 2008, carrier filed a motion asking the administrative law judge to dismiss carrier as the responsible carrier, and to rescind its insurance policy with Karst Robbins Coal Company, thus relieving carrier of any responsibility for the payment of benefits in this claim.

judge's denial of benefits. Thus, carrier contends, Karst Robbins Machine Shop has been finally determined to the responsible operator in this case, and the issue is not subject to readjudication. Carrier's Brief at 8-10; Carrier's Reply Brief at 8-9. Carrier's contention lacks merit.

The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises,[6] has held that for collateral estoppel to apply, four elements must be met:

> (1) the precise issue raised in the present case must have been raised and actually litigated in the prior proceeding;
> (2) determination of the issue must have been necessary to the outcome of the prior proceeding;
> (3) the prior proceeding must have resulted in a final judgment on the merits; and
> (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding.

Nat'l Satellite Sports, Inc. v. Eliadis, Inc., 253 F.3d 900, 908 (6th Cir. 2001); *see Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999)(*en banc*); *see also Sedlack v. Braswell Services Group, Inc.*, 134 F.3d 219, 224 (4th Cir. 1998). In the present case, as the administrative law judge found, and as the Director contends, benefits were denied in claimant's original claim, and thus, the determination as to the responsible operator was not necessary to support the denial of benefits. *See Hughes*, 21 BLR at 1-137. Moreover, in light of the denial of benefits, the Director, as the protector of the Trust Fund, had no incentive to challenge the responsible operator finding made in connection with claimant's initial claim. *See quoting Detroit Police Officers Ass'n v. Young*, 824 F.2d 512, 515 (6th Cir. 1987); *see also Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, n.4 (1979). For these reasons, we affirm the administrative law judge's finding that collateral estoppel does not preclude relitigation of the responsible operator issue. Decision and Order at 7.

Turning next to the issue of whether claimant was an employee of Karst Robbins Coal Company, Inc., or Karst Robbins Machine Shop, the administrative law judge found that, beginning with claimant's first claim, the record is replete with evidence establishing that Karst Robbins Coal Company was properly designated by the district

[6] The record reflects that claimant's coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

director as the responsible operator in this claim. Decision and Order at 4; Director's Exhibit 21. Specifically, the administrative law judge found that the record established that, although claimant received his paychecks from Karst Robbins Machine Shop, the Machine Shop was owned, in part, by the owner of Karst Robbins Coal Company, and was formed solely to supply contract labor to Karst Robbins Coal Company, the coal mine operator. Decision and Order at 4-5; Director's Exhibit 21. In addition, the Machine Shop's payroll expenses were reimbursed by Karst Robbins Coal Company, the Machine Shop made no profit, and it had no other business. Director's Exhibit 21. Moreover, claimant testified that he never worked in the Machine Shop, but spent his time in the Karst Robbins Coal Company-owned and operated mines, where his actual work was directed and controlled by Karst Robbins Coal Company. Decision and Order at 5; Hearing Tr. at 14-15. The administrative law judge noted that the purpose of this business arrangement was to minimize the cost of workers' compensation insurance. Decision and Order at 5; Director's Exhibit 21, 1991 Deposition of Fred Moore at 13. Karst Robbins Coal Company would ask each employee to choose between coverage under the Coal Company policy, or under the Machine Shop's policy. Decision and Order at 4-5; Director's Exhibit 21. Those who chose coverage under the Machine Shop's policy were asked to sign a waiver of workers' compensation coverage while working in the Coal Company mines. Decision and Order at 4-7; Director's Exhibit 21. They were then assigned to the Machine Shop for payroll purposes, but provided labor for the Coal Company in its coal mine. Decision and Order at 5; Director's Exhibit 21. The administrative law judge therefore found that, because Karst Robbins Coal Company directed, controlled, and supervised claimant in the performance of his coal mine employment duties, Karst Robbins Coal Company was the properly designated responsible operator, pursuant to 20 C.F.R. §725.495(a)(2)(i). Decision and Order at 5-7.

Carrier raises no specific challenge to the administrative law judge's finding that Karst Robbins Coal Company is the properly designated responsible operator. Therefore, the finding is affirmed, as it is supported by substantial evidence. *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005). Nor does carrier dispute the administrative law judge's finding that carrier's contract with Karst Robbins Coal Company provides coverage for Karst Robbins Coal Company's employees. Decision and Order at 7. We, therefore, affirm the administrative law judge's finding that the Director was not required to investigate whether Karst Robbins Machine Shop also held workers' compensation coverage. Decision and Order at 8. Consequently, as the administrative law judge permissibly rejected each of carrier's arguments in favor of dismissal, we affirm the administrative law judge's denial of carrier's motion to be dismissed as the responsible carrier.

Carrier next asserts that, even assuming that Karst Robbins Coal Company is the responsible operator, carrier's contract of insurance must be rescinded because Karst Robbins Coal Company secured its coverage through fraudulent representations to carrier

as to its employees. Carrier's Brief at 8. Specifically, carrier asserts that Karst Robbins Coal Company represented that it employed only ten miners, when, in fact, it may have employed up to 160 miners. As a result, carrier asserts, Karst Robbins Coal Company paid lower premiums than it otherwise would have paid, and carrier assumed a greater risk than it believed it was assuming. Carrier's Brief at 8. Before the administrative law judge, carrier contended that, due to this fraud perpetrated by Karst Robbins Coal Company, its contract of insurance is voidable, and carrier moved that the contract be rescinded. In the alternative, carrier asks that the Board rescind carrier's contract with Karst Robbins Coal Company, as void for fraud.

Considering carrier's motion, the administrative law judge initially found that carrier had provided little to no evidentiary support for its contention that Karst Robbins Coal Company underreported the number of its employees. Decision and Order at 8. The administrative law judge further found, however, that even assuming that Karst Robbins Coal Company had misrepresented the number of its employees to carrier, he lacked jurisdiction to address carrier's motion because it involved the assessment of facts beyond the underlying claim for benefits. Decision and Order at 9-10. On appeal, both carrier and the Director assert that the administrative law judge has the authority to determine all questions with respect to a claim, and that because this issue involves the identity of the party responsible for any benefits awarded, the administrative law judge erred in finding that he lacked jurisdiction to address carrier's argument that it should be relieved of its liability. Carrier's Brief at 11; Director's Response to Carrier at 1 n.2.

We agree with the Director and with carrier that the administrative law judge erred in finding that he lacked jurisdiction to resolve the contract dispute between Karst Robbins Coal Company and carrier. An administrative law judge has the power to resolve all questions in respect to a claim, *see* 20 C.F.R. §725.455(a); *Pyro Mining Co. v. Slaton*, 879 F.2d 187, 12 BLR 2-328 (6th Cir. 1989); *see also Lukman v. Director, OWCP*, 896 F.2d 1248, 13 BLR 2-332 (10th Cir. 1990); *Pruitt v. USX Corp.*, 14 BLR 1-129 (1990), 14 BLR 1-129, and the determination of the identity of the party liable for the payment of benefits is one such question. *See* 20 C.F.R. §§726.203, 726.207; *Gilbert v. Williamson Coal Co.*, 7 BLR 1-289, 291-92 (1984). We, therefore, reverse the administrative law judge's determination that he lacked jurisdiction to address the contractual dispute between carrier and employer. On remand, if reached, the administrative law judge should address carrier's contentions regarding the validity and enforceability of its contract for black lung insurance coverage with Karst Robbins Coal Company. *See Lovilia Coal Co. v. Williams*, 143 F.3d 317, 21 BLR 2-353 (7th Cir. 1998), *aff'g*, 20 BLR 1-58 (1996); *Bates v. Creek Coal Co.*, 18 BLR 1-1 (1993), *rev'd on other grounds*, 134 F.3d 734 (6th Cir. 1997).

Accordingly, the administrative law judge's Decision and Order is affirmed in part, reversed in part, and vacated in part, and the case is remanded to the district director for further proceedings consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge