

BRB No. 02-0647 BLA  
Case No. 95-BLA-02441

THELMA FRISCH, on behalf of	)		
SYLVESTER E. FRISCH	)		
	)		
Claimant-Respondent	)		
	)		
v.	)		
	)		
PEABODY COAL COMPANY	)	DATE	ISSUED:
	)		
Employer-Petitioner	)		
	)		
and	)		
	)		
DIRECTOR, OFFICE OF WORKERS'	)		
COMPENSATION PROGRAMS, UNITED	)		
STATES DEPARTMENT OF LABOR	)		
	)		
Party-in-Interest	)	ORDER	

Employer has filed a motion requesting the Board vacate the administrative law judge's decision or, in the alternative dismiss its appeal without prejudice, and remand this case to the Office of the District Director so that it may pursue modification proceedings before that office. Employer argues that while this case was pending before the administrative law judge it filed a petition for modification which was never addressed. Claimant objects on the ground that employer did not file a petition for modification while the case was pending before the administrative law judge. The Director, Office of Workers' Compensation Programs, did not respond to the motion.

Contrary to claimant's assertion, in its Reply to Claimant's Opposition to Motion for Remand or in the Alternative, Petition for Modification filed before the administrative law judge, employer requested, "the Court treat this pleading as a request for modification and remand it to the district director for processing. A copy of this pleading is therefore being served on the district director for this reason." Reply at 5. A petition for modification does not need to take any particular form, and the alternative request before the administrative law judge is clearly sufficient. See *Betty B Coal Co. v. Director, OWCP*, 194 F.3d 491, 497-98 (4th Cir. 1999) (almost any sort of correspondence can constitute a request for modification as long as it is

timely and expresses dissatisfaction with the prior action); *see also Consolidation Coal Co. v. Borda*, 171 F.3d 175, 180-181 (4th Cir. 1999).

Because the evidence indicates that employer requested modification, the Board grants employer's motion, vacates the administrative law judge's decision, and remands the case to the district director for modification proceedings.

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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PETER A. GABAUER, Jr.  
Administrative Appeals Judge