

BRB No. 90-1367 BLA

HAROLD HAMILTON)	
)	
Claimant-Respondent)	
)	
v.)	
)	DATE ISSUED:
HUMPHREYS ENTERPRISES,)	
INCORPORATED)	
)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

Employer has filed a motion requesting that the Board reinstate employer's appeal and reverse the administrative law judge's finding regarding the identity of the responsible operator. Employer was found to be the responsible operator in a Decision and Order issued on April 2, 1990. Employer appealed the Decision and Order. While employer's appeal was pending, the Director, Office of Workers' Compensation Programs (the Director), filed a motion to remand the case to the district director for modification proceedings, asserting that Blackwood Fuel Company should be substituted as the responsible operator. Accordingly, the Board remanded the case to the district director for modification proceedings, indicating that employer's appeal would be held in abeyance pending the outcome of the Director's modification request. *Hamilton v. Humphrey's Enterprises, Inc.*, BRB No. 90-1367 BLA (Sep. 22, 1992)(Order).

On remand, pursuant to the Director's modification request, the district director issued a proposed order substituting Blackwood as the responsible operator. However, after a hearing, Administrative Law Judge Jeffrey Tureck denied modification in a Decision and Order issued on February 8, 1996. Employer filed its motion to reinstate the appeal on February 23, 1996. The Director has responded, agreeing that employer's appeal should be reinstated. The Director also concedes that no responsible operator was properly and timely identified in this case and states that therefore, the Black Lung Disability Trust Fund (Trust Fund) will assume liability for this claim.

Inasmuch as the modification proceedings are now complete, employer's appeal is reinstated. The Board construes the Director's concession as a withdrawal of controversion of the Trust Fund's liability for this claim. See *Pendley v. Director, OWCP*, 13 BLR 1-23 (1989). Accordingly, the Board vacates the administrative law judge's initial finding naming employer as the responsible operator, and remands the case to the district director for payment of benefits to claimant by the Trust Fund.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge