

BRB Nos. 04-0216
and 04-0285
Case No. 03-LHC-0337
OWCP No. 01-0156242

JAY L. DARLING)
)
 Claimant-Respondent) DATE ISSUED: January 14, 2004
)
 v.)
)
 BATH IRON WORKS CORPORATION)
)
 Employer-Petitioner) ORDER

On November 20, 2003, employer filed a Notice of Appeal of the administrative law judge's Decision on Motion for Reconsideration Amending Decision and Order Awarding Benefits filed November 6, 2003. By letter dated December 2, 2003, the Board acknowledged employer's appeal, BRB No. 04-0216, and set the briefing schedule.

Claimant filed a timely request for reconsideration of the administrative law judge's Decision on Motion for Reconsideration Amending Decision and Order Awarding Benefits filed November 6, 2003. On December 12, 2003, the administrative law judge issued a Second Decision and Order on Motion for Reconsideration Reinstating the Decision and Order Awarding Benefits.

Section 802.206(f) of the Board's Rules of Practice and Procedures, 20 C.F.R. §802.206(f), provides that if a timely motion for reconsideration of a Decision and Order of an administrative law judge is filed, any appeal to the Board, whether filed prior to or subsequent to the filing of the timely motion for reconsideration, shall be dismissed as premature. Following a decision by the administrative law judge, any party who wishes to appeal shall file a new Notice of Appeal with the Board. In light of the foregoing, the Board dismisses employer's appeal, BRB No. 04-0216, as premature.

The Board acknowledges receipt of employer's Notice of Appeal of the administrative law judge's Second Decision and Order on Motion for Reconsideration Reinstating the Decision and Order Awarding Benefits filed December 12, 2003. The Board will construe this pleading as an appeal of the administrative law judge's November 6, 2003 Decision and Order as well as the December 12, 2003 Order on Reconsideration. Employer's appeal is assigned BRB No. 04-0285. All future correspondence to the Board must bear this number.

In addition, employer has filed a letter requesting that its appeals from the administrative law judge's Decision on Motion for Reconsideration Amending Decision and

Order Awarding Benefits and the Second Decision and Order on Motion for Reconsideration Reinstating the Decision and Order Awarding Benefits be consolidated. Employer further request an extension of time to file its Petition for Review and brief. 20 C.F.R. §§802.211, 802.219. In light of the Board's treatment of employer's second notice of appeal, the motion to consolidate and extension request are moot.

Employer must file its Petition for Review and two (2) legible copies within thirty (30) days from receipt of this Order with proof of service on all parties to this appeal. 20 C.F.R. §§802.211, 802.216.

The District Director is notified that this appeal has been filed with the Board. It is requested that the District Director forward the official record to the Board upon receipt of this Order. 20 C.F.R. §802.209.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge