U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

RECENT SIGNIFICANT DECISIONS -- MONTHLY DIGEST # 152
March 2001 - April 2001

A.A. Simpson, Jr.
Associate Chief Judge for Longshore

Thomas M. Burke
Associate Chief Judge for Black Lung

I. Longshore

A. Circuit Courts of Appeals

Ceres Marine Terminals v. Hinton, ___ F.3d ___ (5th Cir. 2001) (Fifth Circuit Case No. 00-60171)(March 8, 2001).

In this suitable alternate employment case, the Fifth Circuit affirmed the ALJ's finding that he was not bound by nebulous stipulations pertaining to alternate employment, and that Employer had not established the existence of jobs that he could secure. The court concluded that the ALJ had not erred in his findings of permanent and total disability.

The court also upheld the ALJ's finding that the request for Section 8(f) relief was untimely in that it was first raised in a Notion for Reconsideration.

[Topics 8.2.4.2 Suitable Alternate Employment: Employer Must Show Nature, Terms, and Availability; 8.2.4.5 Suitable Alternate Employment: Vocational Evidence; 23.7 ALJ May Draw Inferences based on Evidence Presented; 19.3.6 Procedure--Formal Hearing; 19.3.6.1 Procedure–Issues at Hearing; 8.7.9.2 Section 8(f)–Timeliness of Employer's Claim for Relief]

Newport News Shipbuilding & Dry Dock Co., v. Stilley, ___ F.3d ___ (4th Cir. 2001)(Fourth Circuit Case No. 00-1155)(March 12, 2001).

In this occupational disease case, Employer petitioned the Fourth Circuit to reject or substantially modify the last maritime employer rule. In declining to alter the rule, the circuit court noted that the present rule is consistent with the LHWCA and passes constitutional muster. Here the worker was employed for Newport as an electrician's helper for about nine months in the 1950s, during which time he was exposed to airborne asbestos dust and fibers in sufficient quantity and duration to cause mesothelioma. After leaving Newport, he worked for nearly 30 years as an electronics technician at NASA where he was exposed to asbestos for substantial periods, again in

sufficient quantity to cause lung disease. Once diagnosed, the worker had two options for seeking workers' compensation benefits: he could file under the LHWCA or he could file under the FECA. He chose the LHWCA.

In addressing the question of whether the last maritime employer fully liable for a claimant's injury even though a subsequent, non-maritime employer also contributed to the injury, the Fourth Circuit looked to *Todd Shipyards v. Black*, 717 F.2d 1280 (9th Cir. 1983). *But cf. Bath Iron Works v. Brown*, 194 F.3d 1, 7 (1st Cir. 1999) (criticizing the last maritime employer rule in dicta).

[Topics 2.2.16 Occupational Diseases and the Responsible Employer/Carrier; 70.1 Responsible Employer–Generally; 70.2 Responsible Employer–Occupational Diseases and The Cardillo Rule; Responsible Employer–Employer's Defenses; Responsible Employer–Responsible Carrier]

Bath Iron Works Corp. v. Director, OWCP [Hutchins], ___ F.3d ___ (1st Cir. 2001)(First Circuit Case No. 00-1208)(April 5, 2001).

The "last carrier" for purposes of disability payments may not be the same "last carrier" responsible for medical benefits. The circuit court explained that it has adopted a modified version of the "last injurious exposure" and "last insurer" rule, holding that the date of disability, rather than the date of awareness of disease, is the key to determining the responsible insurer for disability.

Here the Claimant had worked as a pipefitter for BIW from 1964 until 1988 when he transferred to the company's planning office because of breathing problems. Claimant filed a claim alleging a gradual injury resulting from continuing exposure to asbestos and other toxic chemicals and was found to have multiple, work-related lung diseases and was awarded medical benefits. Although BIW became self-insured just after the transfer in 1988, there was no evidence submitted that he was exposed to harmful stimuli in his new position. As a result, Birmingham, which had insured BIW during the most recent period of harmful exposure, was assigned full responsibility for Claimant's medical payments. Claimant's health continued to deteriorate and in May of 1995 he was forced to retire. Shortly thereafter he filed a claim seeking modification of the earlier benefits award to include disability payments in addition to medical benefits. Noting a March 1995 "statement of injury" form for inhaling a "substance" [of unknown origin], Birmingham argued that self-insured BIW should be responsible for the additional benefits.

In upholding the ALJ's finding that self-insured BIW was now responsible, the court noted that the traditional notions of res judicata do not govern Section 22 modification proceedings, which may be brought whenever changed conditions or a mistake in a determination of fact makes such modification desirable in order to render justice under the LHWCA. "The ALJ in considering the record of [Claimant's] medical and employment history thus had broad discretion to revisit issues already decided and, if appropriate, to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted."

[**[Topics 2.2.16 Occupational Diseases and the Responsible Employer/Carrier; 22.1 Modification; 70.1 Responsible Employer–Generally; 70.2 Responsible Employer–Occupational Diseases and The Cardillo Rule; Responsible Employer–Employer's Defenses; Responsible Employer–Responsible Carrier; 85.1 Res Judicata, Collateral Estoppel, Full Faith and Credit, Election of Remedies]**

Director, OWCP, v. Ingalls Shipbuilding, Inc., [Galle], ___ F.3d ___ (5th Cir. 2001) (Fifth Circuit Case No. 00-60075) (March 26, 2001)

At issue here is whether parties should exclude or include weekends and holidays when calculating the ten day time period within which a motion for reconsideration must be filed. (Motion must be "filed not later than ten days from the date the [ALJ's] decision or order was filed in the Office of the Deputy Commissioner." 20 C.F.R. § 802.206(b)(1) .) The issue ultimately became one of deciding whether Federal Rule of Civil Procedure 6(a), which could be applied to the Board's rules and excluded weekends and holidays in most cases, applied, or whether 29 C.F.R. § 18.4 (intervening weekends and holidays are included in time computations) applies.

After reviewing the 20 C.F.R. Part 702 regulations, the 29 C.F.R. Part 18 regulations and the 29 C.F.R. Part 802 regulations, the Fifth Circuit found that the only DOL regulatory provision recognizing the right to seek reconsideration of an ALJ's benefit determination is § 802.206. Section 18.4 of 29 C.F.R § 18.4 provides for the computing of time periods specified "under these rules." However, the circuit court found that it was significant that there was nothing in the OALJ rules of practice set out in 29 C.F.R. Part 18 granting, defining, or limiting any right to request reconsideration of an ALJ's decision. It was with this reasoning that the Circuit Court agreed with the Board in rejecting the applicability of § 18.4. to the right granted in 20 C.F.R. § 802.206(b)(1), a separate regulatory part.

Furthermore, the circuit court noted that the Director argued in favor of using Rule 6(a) and that the Director's interpretation of the agency's own regulations is controlling unless that interpretation is plainly erroneous or inconsistent with the text of the relevant regulations. The court found that the Director's position is consistent with the statutory and regulatory purpose of providing for an expeditious handling of LHWCA claims, and therefore is entitled to deference.

Interestingly the Fifth Circuit also noted the historic relationship between motions for reconsideration of an ALJ's decision and motions to amend or alter a judgment pursuant to Federal Rule of Civil Procedure 59(e). Prior to the enactment of § 802.206, the Board found that FRCP 59(e) provided the authority for the filing of a motion for reconsideration with an ALJ. *See General*

Dynamics Corp. v. Hines, 1 BRBS 3 (1974); *Sebben v. Director, OWCP*, 10 BRBS 136 (1970) (noting that the recently passed computation of time rule in 20 C.F.R. Part 802 is "in conformity with rule 6(a)").

[Topic 19.5 Motion for Reconsideration]

Willis v. Pacific Maritime Association, 236 F.3d 1160 (9th Cir. 2001), *amended and rehearing en banc denied at* ___ F.3d ___ (9th Cir. 2001)(Ninth Circuit Case No. 97-16779)(March 27, 2001).

[Note: The original circuit court decision in this ADA matter was previously reported in the Digest. This amended version does not change the substance of the previous decision. The amendment deleted the first paragraph of section II of the original opinion. In its place, the court added a new and more detailed explanation of its finding that an ADA accommodation that is contrary to a CBA seniority system is unreasonable per se. It also added a single paragraph holding that the ADA cannot preempt the NLRA because preemption doctrine applies only to conflicts between state and federal law. This amended version is primarily mentioned here to note the denial of an *en banc* re-hearing request.]

[Topic 8.2.4 Partial Disability/Suitable Alternate Employment]

Staftex Staffing v. Director, OWCP, [Staftex Part III], ___ F.3d ___ (March 26, 2001)(Fifth Circuit Case No. 99-60587).

In this latest version of *Staftex*, the Fifth Circuit moved from a fact based holding (based on the particular facts of the case at hand) to a holding supported by substantive legal precedents.

To recap, originally the Fifth Circuit denied an attorney fee award holding that the plain wording of Section 28(b) permits claimants to obtain attorney's fees only where there has been an informal conference and a written recommendation on the disputed issue(s), and the employer refuses to accept the recommendation. On reconsideration, the court held that the ALJ correctly granted attorney fees, partly based on the particular facts of the case. (When there is an informal conference and recommendation, and the rate of compensation specifically referenced both the AWW and comp rate, then, if the employer raises the rate of the AWW at the time of the formal hearing, a successful claimant's attorney will be entitled to a fee award.)

In this latest version, the Fifth Circuit noted that Employer voluntarily paid compensation based on a certain AWW and that Claimant, satisfied with his compensation rate, had no reason to raise it at the informal conference. The claims examiner, following the informal conference, recommended that the parties agree to an order awarding permanent and total disability benefits with the rate of compensation continuing. The employer did not timely accept the recommendation of the claims examiner, agreed with the claimant's statement of the issues to be resolved at the formal

hearing and raised no new issues until shortly before the formal hearing was scheduled. At that time, Employer agreed to pay total permanent disability but contended that the AWW should be much lower than it had been paying. The Fifth Circuit found that the rate of compensation which was to "continue" is an essential part of the recommendation and the recommendation specifically referenced both the higher AWW and its accompanying compensation rate. Therefore, the Fifth Circuit found that Claimant's counsel did successfully prosecute the case and is entitled to an attorney fee.

[Topic 28.1.2 Attorney Fees–Successful Prosecution]

Barbera v. Director, OWCP, ___ F.3d ___, (3rd Cir. 2001) (Third Circuit Case No. 00-3212)(March 27, 2001).

In overturning the Board's holding in this de minimis issue case, the Third Circuit noted that it is "troubled by the Board's continued unwillingness to uphold properly-supported nominal awards, in the face of clear direction from four courts of appeals and even the Supreme Court." The court found that, "Under the guise of interpreting [the ALJ's] decision, the Board has in effect substituted its own contrary factual determination, in contravention of our holding..." The Third Circuit noted that the ALJ reasonably inferred from the medical evidence that there was at least a "significant possibility" that the claimant would at some future time suffer economic harm as a result of his injury. The first ALJ, in a pre-*Rambo* decision, was bound by the Board's case law (disfavoring de minimis awards) since the circuit had not considered this issue at the time. The court also reinstated the attorney fees found appropriate by the first ALJ.

[Topic 8.2.2 Extent of Disability--De Minimis Awards; 22.3.3 Modification–De Minimis Awards; 28.6.4 Attorney Fees--Factor's Considered in Award]

B. United States District Courts

Dunn v. Lockheed Martin, ___ F.Supp. ___, 2001 WL 294165 (N.D. Tex., March 27, 2001) (No. 3:01-CV-359-G).

In this LHWCA subpoena enforcement case, a party requested the court to enforce a subpoena without having the ALJ certify the facts to the court. The court found that for it to have jurisdiction under Section 27(b) of the LHWCA, the ALJ must authenticate or vouch for the facts in writing or attest to the facts as being true or as represented. *A-Z International v. Phillips*, 179 F.3d 1187, 1193. No facts had been certified to the court showing that anyone had disobeyed or resisted any lawful order or process, or neglected to produce, after having been ordered to do so, any pertinent book, paper, or document, or refused to appear after having been subpoenaed. Thus, the court found that it lacked jurisdiction. The court noted that certification should come, if at all, only from the ALJ hearing the case since he or she is given the power to enforce subpoenas necessary to

his or her considerations.

[Topic 27.1.3 ALJ Issues Subpoenas, Gives Oaths]

C. Benefits Review Board

Stratton v. Weedon Engineering Co., ___ BRBS ___, (BRB No. 00–583) (February 13, 2001).

In this Eleventh Circuit situs issue case, the Board found that the ALJ had properly relied on *Textports Stevedoring Co. v. Winchester*, 554 F.2d 245, 6 BRBS 265, *aff'd on reh'g en banc*, 632 F.2d 504, 12 BRBS 719 (5th Cir. 1980) (held: ALJ properly found gear room located five blocks from the nearest dock constituted a covered situs because it was in the vicinity of navigable waterways; it was as close to the docks as feasible, and it had a nexus to maritime activity).

At issue here is the definition of an "adjoining area." Under the controlling law set forth in *Winchester*, the Fifth Circuit took a broad view of "adjoining area." *Winchester* found that an area can be "adjoining" if it is "close to or in the vicinity of navigable waters, or a neighboring area." Claimant's injury had occurred on an area which sits 50 feet from a now unused, but still navigable, canal, as the canal retained its navigability in law under *Economy Light Co. v. United States*, 256 U.S. 113 (1921). Employer argued that the ALJ did not apply the proper standard for determining situs since there is no maritime nexus between Employer's facility and the closest body of navigable water. Claimant stressed the fact that Employer's facility was within the vicinity of a navigable river, that the area between the facility and the river was primarily marshland, and that the shop is used for maritime repairs.

[Topic 1.6.2 Jurisdiction–Situs, "Over land"]

Holder v. Texas Eastern Products Pipeline, Inc., ___ BRBS ___ (2001)(BRB No. 00-0602) (March 12, 2001).

Where an employer must establish suitable alternate employment (location of injury or location to which a claimant has moved) was at issue in this Fifth Circuit locale case. On appeal, Employer argued that since the Fifth Circuit has not specifically addressed the relocation, the ALJ was required to apply the Board's decisions in *Nguyen v. Ebbtide Fabricators, Inc.*, 19 BRBS 142 (1986), and *Dixon v. John J. McMullen & Associates, Inc.*, 19 BRBS 243 (1986) to find that the location of the injury was the relevant labor market. The ALJ had applied *Wood v. U.S. Dept. of Labor*, 112 F.3d 592, 31 BRBS 43 (CRT) (1st Cir. 1997), and *See v. Washington Metropolitan Area Transit Authority*, 36 F.3d 375, 28 BRBS 96 (CRT) (4th Cir. 1994) to find that Claimant's present residence (relocation) was the relevant area.

The Board acknowledged that in *P&M Crane Co. v. Hayes*, 930 F.2d 424, 24 BRBS 116 (CRT) (5th Cir. 1991), the Fifth Circuit recognized that *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981), dictates that in order for jobs to qualify as suitable alternate employment, they need to be reasonably available "in the local or surrounding community." The Board then found :

> "While, as employer asserts, the Fifth Circuit has not yet addressed the issue of the appropriate community in a case where claimant relocates, the language 'in the local or surrounding community" does not hold that the relevant labor market must be the area in which the injury occurred. Thus, the court's language does not preclude a consideration of the factors enumerated by the courts in *See* and *Wood*."

The Board explained that it was overruling Nguyen and *Dixon* in light of the more recent circuit court opinions of *See* and *Wood.* In *See*, the Fourth Circuit held that the ALJ should determine the relevant labor market after considering such factors as a claimant's residence at the time he files for benefits, his motivation for relocating, the legitimacy of that motivation, the duration of his stay in the new community, his ties to the new community, the availability of suitable jobs in that community as opposed to those in his former residence and the degree of undue prejudice to employer in proving suitable alternate employment in a new location. In *See*, the Fourth Circuit observed that a move predicated on a legitimate intent to reduce an injured claimant's cost of living is consistent with the LHWCA's perception of disability as a physical and economic concept, in that such relocation can mitigate the economic consequences of the claimant's impairment. In *Wood*, the First Circuit held that a claimant's chosen community is presumptively the best place for measuring a claimant's wage-earning capacity. *Wood* held that the employer bears the burden of showing that the original move, or a refusal to move again, is unjustified, or that (reasonableness aside), the prejudice to the employer is just too severe.

[Topics 8.2.4.3 Suitable Alternate Employment: location of jobs; 8.9.6 Wage Earning Capacity Following Relocation]

Jones v. Aluminum Co. of America, ___ BRBS ___ (2001)(BRB Nos. 00-696 and 00-696A) (April 9, 2001).

This decision, which can best be styled *Jones II*, is an appeal from an ALJ's Decision and Order on Remand. The case involves a claim for death benefits by the surviving spouse and children of a decedent who worked for Employer as a millwright welder and general mechanic between 1972 and 1978. Claimants alleged that decedent's untimely death was caused in whole or in part by asbestos exposure while working for Employer.

Jones I denied benefits at the ALJ level. There the ALJ found that the decedent had not engaged in "maritime employment" because his work did not involve the loading or unloading of a vessel. The Board reversed and remanded, holding that the conveyors on which the decedent

worked moved shipped material and were thus part of the unloading process. On remand, the ALJ determined that Claimant had provided sufficient evidence to invoke the Section 20(a) presumption. He then found that Employer had presented evidence sufficient to rebut that presumption in the form of another doctor's report that opined that asbestos alone was an unlikely cause of decedent's cancer. Based on the finding that an asbestos related disease did not cause or contribute to decedent's death, the ALJ denied benefits.

Claimants appealed the ALJ's decision on remand and Employer cross appealed. In *Jones II*, the Board determined that Employer's evidence was insufficient to rebut the Section 20(a) presumption. The Board distinguished the fact that Employer's doctor had never affirmatively stated that the decedent's cancer *was not* caused by asbestos exposure. It held that because this finding was not included in the medical report, Dr. Bass' opinion was insufficient under either the "ruling out" or the "substantial evidence" standard to rebut the Section 20(a) presumption. It also held that the absence of diagnostic evidence of asbestosis did not constitute substantial evidence to rebut the Section 20(a) presumption.

Employer's cross-appeal challenged the determination of decedent's status, the timeliness of Claimant's claim, and the situs of the injury. The Board summarily rejected the status challenge as lacking merit because it was based on the Jones Act Standard from *Chandris, Inc. v. Latsis*, 515 U.S. 347. The Board also held that the timeliness argument was inappropriate because the decedent's constructive knowledge of the dangers of asbestos in the work-place could not be imputed to the decedent's family, the Claimants. Finally, the Board remanded the case for further consideration because it found that the ALJ had not made specific findings sufficient to determine whether the decedent's exposure to asbestos occurred on a covered situs.

[Topics 1.7.1 Jurisdiction–Status, "Maritime Worker;" 20.3 Presumptions–Employer Has Burden of Rebuttal with Substantial Evidence]

Broderick v. Electric Boat Corp., ___ BRBS ___ (2001)(BRB No. 00-0704) (April 6, 2001).

Broderick presents a case of first impression under the LHWCA. Claimant was injured in a car accident while riding home from work. Ordinarily this injury would be outside the course and scope of Claimant's employment and thus the LHWCA would not apply. The unique circumstances of this case however result in a different conclusion.

The ALJ determined that the van in which Claimant was riding at the time of the accident was one of a number of vans owned by a non-profit subsidiary of Employer known as Van Tran. Van Tran was developed by Employer as a ride share program. The non-profit venture that operates and maintains the vans is owned entirely by Employer. Additionally, Employer owns or leases the vans and provides insurance and special parking spots for the vans at Employer's shipyard. To cover the costs of the program, Employer deducts a certain amount of money from the pay check of employees who use the van service to get to and from work. The vans are driven exclusively by

company employees who, in return, are not required to contribute to the operating fund. The nature of this program lead the ALJ to conclude that the vans fell within the "employer's conveyance" exception to the "coming and going" rule, since Employer maintained control over the journey by furnishing transportation. Thus, Claimant was injured within the course and scope of his employment.

Citing a wide variety of state worker's compensation cases with similar facts, the Board affirmed the ALJ's decision that the injury had occurred within the course and scope of Claimant's employment. The Board noted that the fact that Employer is not contractually obligated to provide transportation and the fact that employees pay for the service, were not sufficient to take the injuries outside the course of employment.

[Topics 2.2.9 Definitions–Course of Employment; 2.2.11 Coming and going Rule]

Moore v. Virginia International Terminals, Inc., ___ BRBS ___ (2001) (BRB No. 00-650)(March 26, 2001).

In this Section 22 Modification case, a pro se claimant attempted to use a 1999 motion for modification to establish that a previous motion for modification (1992) was timely. The Fourth Circuit had ruled that the 1992 motion was not timely and a 1991 medical report "did not establish a basis whereby a reasonable person could conclude that a request for modification had been made." Claimant alleged that a period during which Employer was required to pay state compensation tolled the statute of limitations under the LHWCA as to the 1992 motion for modification.

The ALJ denied the 1999 motion as untimely based on Section 13 of the LHWCA. The Board found that the ALJ should not have analyzed the timeliness of the motion under Section 13 since it was not a new claim. Therefore, the Board looked to Section 22 as controlling since it applies to permit modification of previously entered orders and found that Section 22 is properly applied to determine whether Claimant's 1999 motion is timely. A denial of a previously filed motion for modification constitutes a "rejection of a claim" under Section 22, commencing a new statute of limitations for filing a motion for modification. *Betty B Coal Co. v. Director, OWCP*, 194 F.3d 491 (4th Cir. 1999). [Note, the Black Lung Act's Section 22 Modification procedures were modeled after the LHWCA,] The Board found that the Fourth Circuit's reversal of the ALJ's award constituted a rejection of Claimant's claim, which under *Betty B*, commences a new statute of limitations for filing additional motions for modification.

The Board found that Claimant's 1999 motion raised the question of whether there was a mistake in the determination that his prior motion was untimely filed, as opposed to a new request for benefits, and this allegation properly raised an issue under Section 22. The Board held that since this motion was filed less than one month after the Fourth Circuit's decision and was well within the one-year time limit mandated by Section 22, it was timely filed..

However, addressing the merits of the 1999 motion, the Board rejected Claimant's argument that the 1992 motion was timely since it was filed within one year of Employer's voluntary payments in 1993: "[A] motion filed prior to payments made by an Employer cannot be a motion filed within one year after the last payment." (Underscoring added.)

Finding that Claimant has not raised an issue involving any facts, but rather only new legal theories, the Board denied Claimant relief. "Section 22 permits a final decision to be re-evaluated upon a showing of a change in conditions or a mistake in the determination of a fact. While Section 22 extends to mixed questions of law and fact, ..., it cannot be used to raise issues involving only a new legal interpretation or to correct errors of law."

[Topics 22.3.1 Modification–Determining What Constitutes a Valid Request; 22.3.2 Filing A Timely Request; 22.3.6 Legal Error or Change in the Law]

II. Black Lung Benefits Act

A. Circuit Courts of Appeal

In *King v. Jericol Mining, Inc.*, ___ F.3d ___, Case No. 99-4501 (6th Cir. 2001), the Sixth Circuit concluded that it was "apparent" the modification proceedings are "available to employers and employees alike." In a footnote, the court further stated the following:

> We note that the DOL published a final rule on December 20, 2000, amending 20 C.F.R. § 725.310. *See* 65 Fed. Reg. 79,920 (Dec. 20, 2000). The amendments to § 725.310, which are prospective only, became effective on January 19, 2001, while this appeal was pending. Our analysis is premised on § 725.310 as it was written at the time of oral argument. Nevertheless, our review of § 725.310, as amended, leads us to believe that the recent amendments would not affect the outcome of this appeal. Moreover, the parties doe not suggest otherwise, having chosen not to supplement their briefs.

[**modification**; **applicability of amended regulations**]

In *Kerns v. Consolidation Coal Co.*, ___ F.3d ___ (4th Cir. 2001), the court held that it was proper to award fees to an attorney for pursuing the attorney fee award. Moreover, the court upheld the ALJ's award of attorney's fees "for delay in payment." For a more detailed analysis of the award of fees based on a delay in payment, the ALJ's decision is available in the OALJ library of cases, *Kerns v. Consolidation Coal Co.*, Case No. 1981-BLA-9688 (ALJ, Oct. 18, 2000).

[**attorney's fees**]

B. Administrative Law Judge

The matter of *Stacy v. Cheyenne Coal Co.*, 2000-BLA-859 (ALJ, Mar. 19, 2001) was remanded to the district director who was requested to inform Claimant that, pursuant to 20 C.F.R. § 725.305(b), he must file a prescribed form in order for his duplicate claim to be perfected. The ALJ noted that the Board made clear that failure to file the proper form for a duplicate claim, resulted in the claim not being perfected. As a result, the ALJ concluded that she did not have jurisdiction over the matter.

[**duplicate claims–proper form for filing**]