

## PART IV

### ADMINISTRATIVE PROCESSING OF CLAIMS, POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE

#### A. THE CLAIMS PROCESS

##### 1. FILING OF CLAIMS, WITHDRAWAL

The initial phases of adjudication may briefly be summarized as follows. The claimant begins the process by filing a claim. 20 C.F.R. §725.301. The claim must be in writing and conform to the requirements of 20 C.F.R. §725.305. A claim for benefits shall be filed at any of the district offices of the Social Security Administration or the Department of Labor, and shall be considered filed on the day it is received by the office in which it is first filed. 20 C.F.R. §725.303(a)(1). The claim is forwarded to the Office of Workers' Compensation Programs where an initial determination of eligibility is made. 20 C.F.R. §725.304(b).

The regulations also permit the withdrawal of claims subject to certain conditions. 20 C.F.R. §725.306. In several cases arising under the Longshore and Harbor Workers' Compensation Act, the Board has held that in order for a claim to be properly withdrawn, the district director or administrative law judge must approve the withdrawal as being for a proper purpose and in claimant's best interest. ***Rodman v. Bethlehem Steel Corp.***, 16 BRBS 123, 127 n.5 (1984); ***Matthews v. Mid-States Stevedoring Corp.***, 11 BRBS 139 (1979); ***Graham v. Ingalls Shipbuilding/Litton Systems, Inc.***, 9 BRBS 155 (1978).

The district director may, at any time before one year from the date of the last payment of benefits or at any time before one year after the denial of a claim, reconsider the terms of an award or denial of benefits, upon the district director's own initiative or upon the request of either party. 20 C.F.R. §725.310.

#### CASE LISTINGS

[receipt of money exchange for withdrawal of claim is not proper purpose and will not support adjudication officer's approval of proposed withdrawal] ***Rodman v. Bethlehem Steel Corp.***, 16 BRBS 123 (1984); ***Matthews v. Mid-States Stevedoring Corp.***, 11 BRBS 139 (1979).

## DIGESTS

The administrative law judge's order of dismissal was affirmed pursuant to Section 725.305 based on claimant's failure to file an application for benefits. Although Section 725.305 provides no time period in which the Department of Labor must process a claim, it does contain a mandatory requirement on claimant to respond to the request for an application within six months. This claim had not been perfected and therefore could not be processed. **Price v. Director, OWCP**, 11 BLR 1-124 (1988).

The Board strictly construes Section 725.301(d) in affirming the administrative law judge's finding that a survivor's claim filed by the widow's estate after her death was barred because it was not filed during her lifetime and she had never indicated an intent to file a claim in writing prior to her death. **Bianco v. Director, OWCP**, 12 BLR 1-94 (1989).

The Board held that the provisions at Section 725.306 are applicable only up until such time as a decision on the merits, issued by an adjudication officer, becomes effective. **Clevenger v. Mary Helen Coal Co.**, 22 BLR 1-193 (Aug. 30, 2002)(*en banc*); **Lester v. Peabody Coal Co.**, 22 BLR 1-183 (Sept. 9, 2002)(*en banc*).

The Board held that the administrative law judge reasonably considered claimant's best interests in deciding to grant claimant's request for withdrawal of his claim pursuant to 20 C.F.R. §725.306. The Board rejected employer's assertion that the administrative law judge erred by failing to consider whether withdrawal is in employer's best interests. The regulation does not require that employer's interests be considered. 20 C.F.R. §725.306. Moreover, employer had not shown a clear and specific basis for denial of claimant's request for withdrawal. **Bailey v. Dominion Coal Corp.**, 23 BLR 1-85 (Dec. 29, 2005).

The Board affirmed the administrative law judge's decision not to rule on employer's request to order automatic inclusion of the evidence already developed, into the record of any future claim, because once withdrawal of the claim is granted, the claim is considered not to have been filed, 20 C.F.R. §725.306(b), and there is no further issue present. The Board declined to address employer's request to order automatic inclusion of the evidence already developed, and stated that if claimant files a future claim, any required evidentiary rulings will be made by the adjudicating officer assigned to that case. **Bailey v. Dominion Coal Corp.**, 23 BLR 1-85 (Dec. 29, 2005).

The Board held that the administrative law judge erred in concluding that claimant had not requested withdrawal of his petition for modification, deferring to the Director's interpretation of the regulations to allow for the withdrawal of a petition for modification in the same manner as a claimant is permitted to withdraw a claim under 20 C.F.R. §725.306. Citing **Clevenger v. Mary Helen Coal Co.**, 22 BLR 1-193 (2002) (*en banc*),

the Board agreed that, contrary to the administrative law judge's finding, the district director acted appropriately in allowing claimant to withdraw his modification request as there "had not been a decision on the merits issued by an adjudication officer" that was effective prior to the date of claimant's letter advising that he did not wish to pursue modification. The Board held that claimant's withdrawn modification request was to be treated in the same manner as a withdrawn claim and was considered as never having been filed. ***W.C. v. Whitaker Coal Corp.***, BLR (Apr. 30, 2008).

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