

BRB No. 12-0561 BLA

RONNIE E. KERN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WALCOAL, INCORPORATED	)	
	)	DATE ISSUED: 07/30/2013
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS’	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Order Compelling Claimant to Attend Examination and Testing and the Order Denying Claimant’s Request for Reconsideration of Order Compelling Claimant to Attend Examination and Testing of Robert B. Rae, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Paul E. Frampton and Thomas M. Hancock (Bowles Rice LLP), Charleston, West Virginia, for employer.

Ann Marie Scarpino (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers’ Compensation Programs, United States Department of Labor.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order Compelling Claimant to Attend Examination and Testing and the Order Denying Claimant's Request for Reconsideration of Order Compelling Claimant to Attend Examination and Testing (2011-BLA-06008) of Administrative Law Judge Robert B. Rae. The relevant procedural history of this case is as follows: Claimant filed a claim for benefits on June 9, 2006, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). After initially denying benefits,<sup>1</sup> Administrative Law Judge Linda S. Chapman issued a Decision and Order on Remand awarding benefits. Employer appealed the award of benefits to the Board, but subsequently requested that the Board dismiss the appeal and remand the case to the district director for consideration of its request for modification.<sup>2</sup> The Board granted employer's request. *Kern v. Walcoal, Inc.*, BRB No. 11-0120 BLA (Jan. 11, 2011) (unpub. Order).

While the case was pending before the district director, employer twice informed claimant's counsel that claimant was scheduled for a physical examination with Dr. Rosenberg. Claimant's counsel responded on both occasions that claimant refused to appear for any additional physical examinations. Employer requested that the district director dismiss the claim, based on claimant's failure to appear at the scheduled

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<sup>1</sup> In her initial Decision and Order, Administrative Law Judge Linda S. Chapman found that claimant did not establish the existence of pneumoconiosis. Director's Exhibit 47. In Judge Chapman's Decision and Order Granting Request for Reconsideration, she reaffirmed her finding that claimant did not establish the existence of pneumoconiosis. Director's Exhibit 53. The Board vacated the denial of benefits and remanded the case for Judge Chapman to reconsider the admissibility of the digital x-ray evidence, and to determine whether the digital and analog x-ray evidence, and the medical opinion evidence, supported a finding of pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.107. *R.E.K. [Kern] v. Walcoal, Inc.*, BRB No. 09-0290 BLA (Oct. 29, 2009) (unpub.).

<sup>2</sup> In its petition for modification, employer did not allege a specific change in conditions or mistake in a determination of fact. Rather, employer stated: "[t]he circuit courts have concluded that the modification provisions of the Black Lung Benefits Act are broad and permit the reopening of a case based on new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." Petition for Modification at [2] (unpaginated), citing *Betty B Coal Co. v. Director, OWCP [Stanley]*, 194 F.3d 491, 22 BLR 2-1 (4th Cir. 1999); *Lee v. Consolidation Coal Co.*, 843 F.2d 159, 11 BLR 2-106 (4th Cir. 1988); *Saginaw Mining Co. v. Mazzulli*, 818 F.2d 1278, 10 BLR 2-119 (6th Cir. 1987).

examinations. The district director issued an Order to Show Cause requiring claimant to explain why he objected to the examinations. Claimant responded, arguing that the regulations and controlling case law establish that employer does not have a right to examine claimant in support of its request for modification. The district director found claimant's position to be persuasive and rescinded the Order to Show Cause. The district director subsequently issued a Proposed Decision and Order denying employer's request for modification. Employer requested a hearing, and the case was assigned to Administrative Law Judge Robert B. Rae (the administrative law judge).

Prior to the hearing, employer submitted a Motion to Compel Claimant to Attend Examination and Testing and asked the administrative law judge to require claimant to appear at an examination scheduled with Dr. Rosenberg. The administrative law judge granted employer's motion and denied the requests for reconsideration filed by claimant and the Director, Office of Workers' Compensation Programs (the Director). Claimant filed an appeal of the administrative law judge's orders, which the Board accepted on the ground that it met the three-prong test for allowing interlocutory appeals. *Kern v. Walcoal Inc.*, BRB No. 12-0561 BLA (Sept. 28, 2012) (unpub. Order).

In claimant's Petition for Review and Brief, he argues that the administrative law judge erred in granting employer's motion to compel him to undergo a new medical examination and in denying his request for reconsideration.<sup>3</sup> Employer responds, urging affirmance of the orders. The Director has filed a response brief in which he asserts that the administrative law judge erred in ordering claimant to undergo a new physical examination. Claimant and employer filed reply briefs reiterating their arguments on appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>4</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). Additionally, based on the broad discretion given to administrative law judges in resolving procedural matters, the Board will determine whether the party seeking to

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<sup>3</sup> Claimant also renews the request for oral argument that the Board denied in an Order issued on September 28, 2012. *Kern v. Walcoal, Inc.*, BRB No. 12-0561 BLA (Sept. 28, 2012) (unpub. Order). We decline to disturb our Order denying claimant's previous request.

<sup>4</sup> The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as claimant's last coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 9.

overturn an administrative law judge's rulings in these matters has established that the administrative law judge abused his or her discretion. 20 C.F.R. §725.455(c); *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); *Morgan v. Director, OWCP*, 8 BLR 1-491 (1986).

In the administrative law judge's Order Compelling Claimant to Attend Examination and Testing, he determined that, pursuant to 20 C.F.R. §§725.310(b), 725.414, and the Board's holding in *Rose v. Buffalo Mining Co.*, 23 BLR 1-221 (2007), each party was entitled to submit at least one additional examination. July 3, 2012 Order at 1-2. The administrative law judge further found that the cases cited by claimant in his response to employer's notice that an examination had been scheduled were not controlling, as they were decided prior to the effective date of the revised regulations. *Id.* at 2 n.2. Accordingly, the administrative law judge granted employer's motion to compel. *Id.* at 2.

The administrative law judge subsequently issued an order in which he denied *claimant's request for reconsideration, stating:*

There is no indication whatever that [e]mployer filed the Request for Modification for improper reasons. Employer is entitled to file such pleadings under the regulations, as is the [c]laimant. Both parties have obligations under the regulations and one such obligation is for the [c]laimant to submit to reasonable physical examination and testing. Since the case has been continued, the [c]laimant has sufficient time to undergo examination and testing by a physician of his choice as well as submitting to the [e]mployer's examination. To pursue the claim, the [c]laimant must comply with the required examination and testing.

July 17, 2012 Order at 1. The Director also filed a motion requesting that the administrative law judge reconsider his order, arguing that the regulations do not provide an employer with an absolute right to obtain an examination on modification, and that employer must first produce evidence justifying its examination request before a claimant can be compelled to undergo further testing. The administrative law judge denied the Director's motion, finding that, "it is clear from the regulations and the arguments of the Director that it is within my discretion to order additional examinations and testing . . . additional examination and testing are proper in this case." July 23, 2012 Order at 1.

Claimant asserts that the administrative law judge's order compelling him to appear for a physical examination is contrary to law and must be reversed. In support of his argument, claimant maintains that employer has not satisfied 20 C.F.R. §725.203(d), which requires the party opposing entitlement to establish that an issue exists as to the validity of an award of benefits. Claimant also contends that the administrative law judge

erred in declining to follow the Board's holdings in *Selak v. Wyoming Pocahontas Land Co.*, 21 BLR 1-173 (1999) (en banc) and *Caudill v. Cumberland River Coal Co.*, BRB No. 00-1185 BLA (Sept. 26, 2001) (unpub.), *aff'd sub nom.*, *Cumberland River Coal Co. v. Caudill*, 207 F.App'x 529 (6th Cir. 2006). In addition, claimant argues that the administrative law judge did not comply with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 30 U.S.C. §932(a) and 33 U.S.C. §919(d), as he failed to adequately explain how 20 C.F.R. §725.310(b) and the Board's holding in *Rose*, support his conclusion.

The Director concurs with the allegations of error raised by claimant regarding the administrative law judge's interpretation of 20 C.F.R. §725.310(b) and his determination that cases decided prior to the effective date of the revised regulations are not controlling. The Director maintains that, although employer has the right to request modification, the provisions of 20 C.F.R. §725.310(b) do not guarantee employer an unrestricted right to compel claimant to submit to an additional examination in support of its request. According to the Director, the enumeration of the evidence which the parties are entitled to *submit* on modification does not mean that the parties have an absolute right to *obtain* new testing under all circumstances. The Director also agrees with claimant that the administrative law judge erred in failing to determine whether employer satisfied 20 C.F.R. §725.203(d), by presenting a question as to the validity of the award of benefits to claimant. The Director further maintains that 20 C.F.R. §§725.203(d) and 725.310(b) are not in conflict with 20 C.F.R. §725.414(a)(3)(i), which allows employer to "obtain *and* submit" certain testing as part of its affirmative case in initial claim proceedings. 20 C.F.R. §725.414(a)(3)(i) (emphasis added).

Employer responds that the administrative law judge's order compelling claimant to appear for a new physical examination was within the broad discretion granted to him in assessing requests for modification pursuant to 20 C.F.R. §725.310(b). Employer also alleges that the administrative law judge's order is supported by the terms of revised 20 C.F.R. §725.310(b), as the Department of Labor (DOL) changed permissive language, which provided that "additional evidence may be submitted by any party," 20 C.F.R. §725.310(b) (2000), to mandatory language, which provides that the parties "shall each be entitled" to submit specific types of evidence, including an additional medical report, 20 C.F.R. §725.310(b). In addition, employer argues that the preamble to 20 C.F.R. §725.310(b) establishes that the DOL chose the mandatory language to ensure that the parties would have equal access to evidence in modification proceedings. Employer further maintains that the relevant case law states that it is within the administrative law judge's discretion to order additional medical testing and that there is no evidentiary threshold that an employer must satisfy prior to "obtaining discovery in a modification request." Response to Petition for Review and Brief at 7. Employer argues that 20 C.F.R. §725.414(a)(3)(i), rather than 20 C.F.R. §725.203(d), establishes the only limitation to obtaining an additional examination of claimant and places the burden on

claimant to establish that his refusal to appear for an examination scheduled by employer is reasonable. According to employer's interpretation, the administrative law judge did not rule that employer has an "absolute right" to compel claimant to a re-examination, nor does employer request the adoption of such a standard. Reply to Director's Response Brief at 2. Employer contends that the administrative law judge's actions were proper in light of his findings that there was "no indication whatsoever that the Operator filed the Request for Modification for improper reasons" and that claimant failed to provide a reasonable basis for refusing the examination. *Id.* at 2-3, *quoting* July 17, 2012 Order at 1.

The arguments made by the parties on appeal raise several questions concerning the proper interpretation of the regulations at 20 C.F.R. §§725.203(d), 725.310(b) and 725.414(a)(3)(i) and the precedential value of cases decided before the 2001 revisions to the regulations set forth in 20 C.F.R. Part 725. In this case involving employer's request for modification to terminate claimant's award of benefits, the fundamental issue presented by the parties is whether employer is automatically entitled to a new medical examination, absent a reasonable objection by claimant, or is there a threshold showing that employer must satisfy to obtain a new medical examination of claimant. Claimant and the Director rely on the regulation at 20 C.F.R. §725.203(d), which pertains to the duration and cessation of entitlement and provides:

Upon reasonable notice, an individual who has been finally adjudged entitled to benefits shall submit to any additional tests or examinations the Office deems appropriate, and shall submit medical reports and other relevant evidence the Office deems necessary, *if an issue arises pertaining to the validity of the original award.*

20 C.F.R. §725.203(d) (emphasis added). Employer maintains that, because 20 C.F.R. §725.203(d) conflicts with 20 C.F.R. §725.310(b), which sets forth the procedure for modification and does not create any procedural barrier to obtaining a new examination, the latter regulation should control. 20 C.F.R. §725.310(b) provides:

Modification proceedings shall be conducted in accordance with the provisions of this part as appropriate, except that the claimant and the operator, group of operators or the fund, as appropriate, *shall each be entitled to submit* no more than one additional chest X-ray interpretation, one additional pulmonary function test, one additional arterial blood gas study, and one additional medical report in support of its affirmative case along with such rebuttal evidence and additional statements as are authorized by paragraphs (a)(2)(ii) and (a)(3)(ii) of [20 C.F.R.]§725.414.

20 C.F.R. §725.310(b) (emphasis added). Employer also alleges that the regulation at 20 C.F.R. §725.414(a)(3)(i), which identifies the evidence that a responsible operator is entitled to submit in support of its affirmative case in response to a claim, creates a threshold that claimant must satisfy. Under 20 C.F.R. §725.414(a)(3)(i):

If a miner *unreasonably refuses* – (A) To provide the Office or the designated responsible operator with a complete statement of his or her medical history and/or to authorize access to his or her medical records, or (B) To submit to an evaluation or test requested by the district director or the designated responsible operator, the miner’s claim may be denied by reason of abandonment.

20 C.F.R. §725.414(a)(3)(i) (emphasis added).

After reviewing the administrative law judge’s orders and the parties’ arguments on appeal, we are persuaded that claimant and the Director are correct in asserting that 20 C.F.R. §725.203(d), providing for the cessation of entitlement, is applicable to requests for modification, and that it creates a standard that employer must satisfy before claimant can be compelled to submit to a new examination. As the Director notes, 20 C.F.R. §725.310(b) provides that “[m]odification proceedings shall be conducted in accordance with this part as appropriate . . . .” Because 20 C.F.R. §725.203(d) is included in Part 725 and, under 20 C.F.R. §725.2, is relevant to all pending claims, it applies to requests for modification filed pursuant to 20 C.F.R. §725.310. Support for this interpretation is found in the preamble to revised 20 C.F.R. §725.203, wherein the DOL stated:

Subsection (d) simply recognizes the Department’s authority to investigate any finally approved miner’s claim if circumstances raise an issue pertaining to the validity of the award. Such authority is necessary in order to monitor a miner’s continuing eligibility and prevent the payment of benefits to any claimant whose eligibility ceases. The Department rejects the suggestion that this authority should be limited to cases involving fraud or the miner’s return to coal mining. Limiting the reopening authority under subsection (d) in this manner would be inconsistent with the Department’s statutory authority to modify an award based on a factual mistake or change in condition at any time within one year after the last payment of benefits. 33 U.S.C. [§]922, as incorporated by 30 U.S.C. [§]932(a); 20 C.F.R. [§]725.310. Furthermore, such a limitation would impinge on the right of responsible operator to petition for modification and request a medical examination *if circumstances call into question the entitlement of the miner*. The Department emphasizes that *the responsible operator does not have an absolute right to compel the claimant to submit to a medical examination for purposes of the modification petition*. *Selak v.*

*Wyoming Pocah[on]tas Land Co.*, 21 [BLR] 1-178 (1999); *see also Stiltner v. Westmoreland Coal Co.*, BRB No. 98-0337 [BLA], slip op. at 5 (Jan. 31, 2000) (en banc) [(unpub.)]. Upon production of reasonable evidence justifying the request, however, the district director (or administrative law judge) may order the claimant to submit to a medical examination. *Selak*, 21 [BLR] at 1-179.

65 Fed. Reg. 79,920, 79,962 (Dec. 20, 2000) (emphasis added) (parenthetical omitted). Contrary to employer's contention, therefore, the DOL's statement goes beyond merely recognizing that an administrative law judge can, within his or her discretion, compel a miner to appear at an additional examination in support of an employer's request for modification. The DOL explicitly determined that an employer's right to obtain a new examination is not absolute and that it must establish the existence of circumstances calling into question the miner's entitlement to benefits. *Id.*

We also find no merit in employer's argument that the preamble to the revised version of 20 C.F.R. §725.310 overrides any conflicting language in the preamble to 20 C.F.R. §725.203(d). Employer maintains that, because the DOL stated that one of its goals in promulgating 20 C.F.R. §725.310 was to give the parties an equal opportunity to develop evidence on modification, the regulation should be interpreted as giving employer the right to obtain an additional examination in support of its request for modification, unless claimant affirmatively shows that employer's request is unreasonable under 20 C.F.R. §725.414(a)(3)(i). In the preamble to 20 C.F.R. §725.310, the DOL indicated:

One comment argues that an operator seeking to modify a benefits award should not be able to obtain new pulmonary testing, but should instead be limited to the report of one consultant. The commenter also argues, however, that miners should be able to submit the results of additional testing in support of a modification petition seeking to change a denial of benefits to an award. The Department does not agree that opposing parties should be governed by different evidentiary rules. One of the Department's goals in proposing a limitation on the submission of documentary medical evidence, as reflected in [20 C.F.R. §§]725.414 and 725.310, is to ensure that claimant and the responsible operator have an equal opportunity to present the highest quality evidence to the factfinder. That goal would not be served by creating an evidentiary advantage for a claimant who requests modification of a denial of benefits. *In such cases*, both the claimant and the responsible operator, or Trust Fund in appropriate cases, will be entitled to submit one medical report, and associated testing, as well as appropriate rebuttal evidence, as outlined in the Department's second notice of proposed rulemaking.

65 Fed. Reg. 79,920, 79,976 (Dec. 20, 2000) (emphasis added). As the Director maintains, employer's reliance on this language is misplaced, as the DOL's "rejection of the comment advocating that operators be wholly barred from submitting a new medical evaluation on modification" is not inconsistent with the view that 20 C.F.R. §725.203(d) simply "limit[s] employer modification examinations in appropriate circumstances." Director's Response Brief at 9. In addition, the DOL's statement, recognizing that a responsible operator is entitled to submit a new medical report, involved a situation in which a claimant filed a request for modification and obtained a new examination. The present case is distinguishable in that employer filed the request for modification and claimant has not submitted any newly developed medical evidence.

With respect to the application of 20 C.F.R. §725.414(a)(3)(i), employer urges the Board to adopt the holding of the United States Court of Appeals for the Seventh Circuit in *Old Ben Coal Co. v. Director, OWCP [Hilliard]*, 292 F.3d 533, 548, 22 BLR 2-429, 2-455 (7th Cir. 2002), that this regulation applies to requests for modification. In *Hilliard*, the Seventh Circuit reasoned that, because 20 C.F.R. §725.310(b) provides that "[m]odification proceedings shall be conducted in accordance with the provisions of this part as appropriate," and Part 725 includes 20 C.F.R. §725.414, the requirements of 20 C.F.R. §725.414(a)(3)(i) are applicable in modification proceedings, such that the burden is on the miner to establish that the employer's request for a new examination is unreasonable.<sup>5</sup> *Hilliard*, 292 F.3d at 548, 22 BLR at 2-455. Accordingly, the Seventh Circuit remanded the case to the administrative law judge to determine whether the miner's widow reasonably refused to provide the employer with the slides from the

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<sup>5</sup> The United States Court of Appeals for the Sixth Circuit reached a different conclusion in *Cumberland River Coal Co. v. Caudill*, 207 F.App'x 529 (6th Cir. 2006), *aff'g Caudill v. Cumberland River Coal Co.*, BRB No. 00-1185 BLA (Sept. 26, 2001) (unpub.), stating:

Section 725.401 provides that subpart E, which is where [20 C.F.R.] §725.414 is found, deals with the district director's adjudication of "claims." The term "claim" is defined in [20 C.F.R.] §725.101(a)(1) as "a written assertion of entitlement to benefits under section 415 . . . ." In light of that definition, a modification of an award is not an adjudication of a "claim;" rather, it is the *reconsideration* of such an adjudication. *See also* 20 C.F.R. §725.310(a) (stating that, at the request of any party, the district director may "*reconsider* the terms of an award or denial of benefits") (emphasis supplied). Therefore, we conclude that it is not appropriate to apply [20 C.F.R.] §725.414(a)(3)(i) to modification proceedings as the [*Hilliard*] court did.

*Caudill*, 207 F.App'x at 535.

miner's autopsy. Because the issue before the Seventh Circuit did not involve a request to re-examine a miner during modification proceedings, or the applicability of 20 C.F.R. §725.203(d) to such a request, we decline to treat the court's holding in *Hilliard* as persuasive precedent in this case.

We further hold that, contrary to the administrative law judge's finding, the Board's decision in *Rose* does not support the administrative law judge's determination that 20 C.F.R. §725.414 applies to modification requests. In *Rose*, the miner alleged that the administrative law judge erred in finding that he could only submit the evidence described in 20 C.F.R. §725.310(b) in support of his request for modification, even though he had not submitted all of the evidence permitted to him under 20 C.F.R. §725.414(a)(2) when his claim was originally adjudicated. The Board held that:

Where a petition for modification is filed on a claim arising under the amended regulations, each party may submit its full complement of medical evidence allowed by 20 C.F.R. §725.414, *i.e.*, additional evidence to the extent the evidence already submitted in the claim proceedings is less than the full complement allowed, plus the party may also submit the additional medical evidence allowed by 20 C.F.R. §725.310(b).

*Rose*, 23 BLR at 1-228. The Board's ruling did not address whether the parties could compel the production of new evidence or whether 20 C.F.R. §725.414(a)(3)(i), which explicitly refers to the development of an employer's affirmative case evidence, applies to the development of evidence in support of a request for modification at 20 C.F.R. §725.310(b).

In cases in which the issue has been squarely raised, the Board has held that an administrative law judge must determine, on a case-by-case basis, whether employer has raised a credible issue pertaining to the validity of the original adjudication, such that an order compelling claimant to submit to examinations or tests would be in the interest of justice. *Stiltner v. Wellmore Coal Corp.*, 22 BLR 1-37, 1-40-42 (2000) (en banc); *Selak*, 21 BLR at 1-177-79. The fact that our published decisions pre-date the revisions to 20 C.F.R. §725.310(b) does not mean that they are no longer valid precedent. In *Stiltner* and *Selak*, the Board relied on 20 C.F.R. §725.404(b) (2000), which required that a claimant "present himself or herself for, and submit to," an additional physical examination, "where there is an issue pertaining to the validity of the original adjudication of disability." 20 C.F.R. §725.404(b) (2000); *Stiltner*, 22 BLR at 1-40-42; *Selak*, 21 BLR at 1-177-79. When the DOL revised the regulations in 2001, it shifted the latter portion of 20 C.F.R. §725.404(b) (2000) to 20 C.F.R. §725.203(d) and altered the terms to state that claimant must submit to an additional examination, "if an issue arises pertaining to the validity of the original award." 20 C.F.R. §725.203(d). Indeed, as noted above, the DOL cited the Board's decision in *Selak* in the preamble to revised 20 C.F.R. §725.203. 65

Fed. Reg. 79,920, 79,962 (Dec. 20, 2000). We further hold, therefore, that the legal standard set forth in *Selak* is applicable to this case.

Because the administrative law judge did not apply this standard, we must vacate his Order Compelling Claimant to Attend Examination and Testing and his Order Denying Claimant's Request for Reconsideration of Order Compelling Claimant to Attend Examination and Testing. On remand, the administrative law judge must determine whether employer "raised a credible issue pertaining to the validity of the original adjudication . . . so that an order compelling claimant to submit to examinations or tests would be in the interest of justice."<sup>6</sup> *Selak*, 21 BLR at 1-179. The administrative law judge must set forth his findings in detail, including the underlying rationale, as required by the APA. See *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). In addition, when the administrative law judge reaches the merits of employer's request for modification, he must be mindful that modification does not automatically flow from a finding that there has been a change in conditions or a mistake in a determination of fact. Modifying an award or denial of benefits must additionally render justice under the Act. See *Westmoreland Coal Co. v. Sharpe*, 692 F. 3d 317, 327-28, 25 BLR 2-157, 2-173-174 (4th Cir. 2012), *cert. denied*, 570 U.S. (2013); *Sharpe v. Director, OWCP*, 495 F.3d 125, 131-132, 24 BLR 2-56, 2-67-68 (4th Cir. 2007).

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<sup>6</sup> We deny claimant's request that we reverse the administrative law judge's determination that employer was entitled to compel claimant's appearance at a physical examination, as the administrative law judge, in his role as fact-finder, must make the determination as to whether employer has met the requisite standard. See *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007) (en banc).

Accordingly, the administrative law judge's Order Compelling Claimant to Attend Examination and Testing and Order Denying Claimant's Request for Reconsideration of Order Compelling Claimant to Attend Examination and Testing are vacated, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge