

BRB No. 04-0803 BLA

DAVID RAMEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SOUTH AKERS MINING COMPANY)	
)	DATE ISSUED: 06/16/2005
and)	
)	
AMERICAN INTERNATIONAL SOUTH)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Order of Dismissal of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

David Ramey, Wilmore, Kentucky, *pro se*.

Timothy J. Walker (Ferreri & Fogle), Lexington, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge,
McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Order of Dismissal (04-BLA-5205) of Administrative Law Judge Robert L. Hillyard rendered on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of

1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).¹ The administrative law judge based dismissal of the claim upon 20 C.F.R. §725.465(a)(1). On appeal, claimant generally seeks review of the decision below, and indicates that he is still looking for an attorney. Employer responds, urging affirmance of the administrative law judge's Order of Dismissal. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The pertinent facts in this case are as follows: Neither claimant nor any representative for claimant appeared at the hearing held on June 2, 2004. On June 4, 2004, the administrative law judge issued an Order to Show Cause, directing claimant to show cause why the instant claim should not be dismissed based on his failure to appear at the hearing. Claimant did not respond to the administrative law judge's Order to Show Cause. The Director responded to the administrative law judge's Order, indicating that he had no objection to the dismissal of the claim. By Order of Dismissal dated June 23, 2004, the administrative law judge dismissed the instant claim pursuant to 20 C.F.R. §725.465(a).² Claimant now appeals from the administrative law judge's June 23, 2004 Order of Dismissal.

¹ The miner filed his claim for benefits on September 27, 2002. Director's Exhibit 2. The district director denied the claim by Proposed Decision and Order dated August 18, 2003. Director's Exhibit 17. The district director found that the evidence established the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202 and 718.203 respectively, but determined that the evidence was insufficient to establish total disability and total disability due to pneumoconiosis at 20 C.F.R. §§718.204(b), (c). Claimant filed a request for a hearing on September 3, 2003. Director's Exhibit 18. A Notice of Hearing was issued on March 15, 2004, scheduling the hearing for June 2, 2004. By letter dated April 14, 2004, the administrative law judge informed claimant about legal representation in claims filed under the Act.

²The regulation at 20 C.F.R. §725.465(a) provides, in pertinent part:

The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim:

A review of the record supports the administrative law judge's findings that neither claimant, nor any representative for claimant, appeared at the June 2, 2004 hearing or responded to the June 4, 2004 Order to Show Cause.³ The administrative law judge thus properly dismissed the instant claim pursuant to 20 C.F.R. §725.465(a). 20 C.F.R. §§725.465(a), 725.466; *see Clevinger v. Regina Fuel Co.*, 8 BLR 1-1 (1985).

Accordingly, the Order of Dismissal of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

-
- (1) Upon the failure of the claimant or his or her representative to attend a hearing without good cause;
 - (2) Upon the failure of the claimant to comply with a lawful order of the administrative law judge; ...

³ Claimant's statement that he is still looking for an attorney, does not explain his failure to appear at the hearing or to respond to the administrative law judge's Order to Show Cause.