

BRB No. 06-0263 BLA

FRANCIS A. PERCHINSKY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 10/25/2006
	)	
BETHENERGY MINES, INCORPORATED	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER

Employer appealed the Decision and Order - Awarding Benefits (05-BLA-5077) of Administrative Law Judge Daniel L. Leland 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). On August 22, 2006, employer's counsel informed the Board that he no longer represented employer, and on September 26, 2006, claimant moved to dismiss employer's appeal on the ground that employer was no longer a party to this claim.

The Director, Office of Workers' Compensation Programs (the Director), has now filed a Motion to Remand For Payment From The Black Lung Disability Trust Fund (the Trust Fund), notifying the Board that employer is bankrupt and is no longer defending claims, because the proceeds of a surety bond for employer's defense litigation have been exhausted. The Director indicates that, as a result, the Trust Fund is responsible for the payment of benefits awarded against employer. The Director states further that he does not dispute the determination that claimant is entitled to benefits. Consequently, the Director requests that the case be remanded to the district director for payment of benefits by the Trust Fund, and that employer be dismissed from the case.

The Board accepts the Director's Motion to Remand for Payment as a withdrawal of controversion of all issues. *See Pendley v. Director*, OWCP, 13 BLR 1-23 (1989). Accordingly, we grant the Director's motion and remand this case to the district director for the payment of benefits to claimant, and we dismiss employer from this case.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge