

BRB Nos. 12-0235 BLA
and 12-0236 BLA
Case Nos. 2009-BLA-05469
and 2007-BLA-06097

RUBY E. SMITH)
(Widow of and O/B/O OKEY SMITH))
)
Claimant-Respondent)
)
v.)
)
EASTERN COAL CORPORATION) DATE ISSUED: 09/27/2012
)
Employer-Petitioner)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) ORDER

On February 2, 2012, employer filed an appeal of the Decision and Order in which Administrative Law Judge Theresa C. Timlin awarded benefits on a miner's claim and a survivor's claim. Employer subsequently filed a Motion and Affidavit for Remand to Reopen the record, premised upon an Emergency Order of Suspension of the medical license of Dr. James A. Dennis, issued by the Kentucky Board of Medical Licensure on August 17, 2012. Employer argues that, because the Emergency Order of Suspension, and the Complaint upon which it was based, contain information establishing that Dr. Dennis engaged in conduct "likely to deceive, defraud, or harm the public," the administrative law judge must reconsider her reliance upon Dr. Dennis's April 21, 2008 autopsy report to find that claimant established the existence of complicated pneumoconiosis and invoked the irrebuttable presumption of total disability, and death, due to pneumoconiosis set forth in 20 C.F.R. §718.304. Employer's Motion and Affidavit for Remand to Reopen the Record at 4. Neither the Director, Office of Workers' Compensation Programs, nor claimant have responded to employer's motion.

Based upon employer's assertion that the administrative law judge's consideration of new evidence is necessary to the adjudication of this case, we construe employer's Motion and Affidavit for Remand to Reopen the Record as a request for modification. 20 C.F.R. §802.301(c). Consequently, we dismiss employer's appeals in BRB Nos. 12-0235

BLA and 12-0236 BLA, without prejudice, and remand this case to the administrative law judge for consideration of employer's request for modification in accordance with 20 C.F.R. §725.310. If the request for modification is denied, employer may ask the Board to reinstate its appeal within thirty days of the date of the denial. 20 C.F.R. §802.301(c). If the request for modification is granted, any adversely affected party may file a new appeal with the Board within thirty days of the date on which the decision or order on modification is filed. *Id.*

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge