

BRB No. 92-2204 BLA

HOWARD HAMLIN )

)  
Claimant-Petitioner )

)  
v. )

)  
PINE HILL COAL COMPANY )

)  
and )

)  
FIRST SOUTHERN INSURANCE )  
COMPANY )

DATE ISSUED:

)  
Employer/Carrier- )  
Respondent )

)  
DIRECTOR, OFFICE OF WORKERS' )

COMPENSATION PROGRAMS, UNITED )

STATES DEPARTMENT OF LABOR )

)  
Party-In-Interest )

DECISION and ORDER

Appeal of the Decision and Order of Alfred Lindeman, Administrative Law Judge, United States Department of Labor.

John C. Dixon, Barbourville, Kentucky, for claimant.

John T. Chafin (Francis, Kazee & Francis), Prestonburg, Kentucky, for employer.

Before: DOLDER, Acting Chief Administrative Appeals Judge, SMITH  
and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (91-BLA-2520) of Administrative Law Judge Alfred Lindeman denying benefits 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). This case involves a duplicate claim. Claimant filed his first claim on August 23, 1985 and it was denied on January 10, 1986. Claimant filed a second claim on June 22, 1987, which was denied on August 10, 1987. The current claim was filed on June 23, 1989 and, upon considering the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant established eight and three-quarter years of coal mine employment. The administrative law judge then found that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 and made no specific findings on the merits of the claim. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in concluding that claimant had not met his burden of proving a material change in conditions and in concluding that claimant is not entitled to benefits. Employer responds in support of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond to this appeal.

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are 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).

In making his material change finding pursuant to 20 C.F.R. §725.309, the administrative law judge utilized the standard set forth in *Sahara Coal Co. v. Director, OWCP*, 15 BLR 2-227, 946 F.2d 554 (7th Cir. 1991). The administrative law judge notes that the Board follows the standard set forth in *Spese v. Peabody Coal Co.*, 11 BLR 1-174 (1988), however he states that the holding in *Sahara* is persuasive and more consistent with the reasoning of *Lukman v. Director, OWCP*, 896 F.2d 1248 (10th Cir. 1990). See Decision and Order at 10. As we have held that we will apply the *Spese* standard in all circuits except the seventh, in which the *Sahara* standard will be applied, we vacate the administrative law judge's Decision and Order and remand the case for the administrative law judge to use the proper standard in making his material change finding pursuant to 20 C.F.R. §725.309 and for the administrative law judge to make findings on the merits of the claim pursuant to 20 C.F.R. Part 718. See *Shupink v. LTV Steel Co.*, 17 BLR 1-24 (1992).

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated and the case is remanded for further findings consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Acting Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge