

Format of a Circular

US Department of Labor

Office of Workers' Compensation Programs
Division of Coal Mine Workers' Compensation
Washington, DC 20210

July 9, 1996

BLBA CIRCULAR NO. 96-1

SUBJECT: Published BRB Decision Upholding That The One Year Modification Period Starts With The Effective Denial Of A Claim: DDW v. Eastern Associated Coal Corporation and Director, BRB No. 95-0966 (April 23, 1996)

Claimant filed a petition on June 23, 1993 requesting modification of an ALJ's decision issued on June 23, 1992 and filed in the deputy commissioner's office on July 1, 1992. The District Director dismissed the petition as untimely, and the ALJ granted the employer's motion for summary judgement, holding the petition untimely because it was not filed within one year after the denial of the claim as required under 20 CFR 725.310(a).

The BRB agreed with the Director's position that the one year modification period as incorporated under Section 932 of the BLBA commences only with the effective denial of a claim, and applying precedent construing Section 21(a) of the Longshore Act, found that such a denial occurs on the district director's filing of an ALJ's decision (for which reason, Decision & Orders are stamped upon receipt at BCR/HAS with an embossed receipt date on the upper right-hand corner of the front page of the Orders). Thus, the claimant's modification petition was filed before one year after the rejection of the claim and was timely. This decision supports BLBA PM Chapter 2-1302.4.a.(3) which states that "An ALJ's decision is effective upon receipt and date-stamping by the Branch of Claims and Review, National Office. If any party files a timely motion for reconsideration or notice of appeal, it does not become final. Any party to the claim has one year from the effective date of an ALJ decision, which has become final, to request modification of the decision."

James L. DeMarce
Director, Division of Coal
Mine Workers' Compensation

Distribution: List No. 3 (All Supervisors, Claims Examiners,
Workers' Compensation Specialists and Field Station Personnel)