



BRB No. 23-0065 BLA

GARY W. BROCK)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ITK MINING & CONSTRUCTION)	
)	
and)	
)	
KENTUCKY EMPLOYERS' MUTUAL)	DATE ISSUED: 8/09/2023
INSURANCE)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

Claimant appeals Administrative Law Judge (ALJ) Jason A. Golden’s Decision and Order Denying Benefits (2021-BLA-05079) rendered on a claim filed December 18, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). In a subsequent handwritten letter to the Benefits Review Board, Claimant’s lay representative asserts that Claimant was “unable to gather evidence due to the Covid 19 outbreak” before the ALJ, including “medical evidence and rebuttal evidence of x-ray[s],” and requests the Board “consider allowing [Claimant] to extend or continue this claim” to obtain the evidence needed. The Board construes Claimant’s request to submit further evidence as a request of modification. 20 C.F.R. §725.310. Accordingly, this appeal is

dismissed, and the case is remanded to the district director for consideration of the request for modification. 20 C.F.R. §802.301.

After the district director processes Claimant's request for modification, the case may be transferred to an ALJ for a hearing pursuant to the regulations. If an ALJ issues a final decision denying the petition for modification, the case may be reinstated on the Board's docket. The case will be reinstated by the Board only if the petitioner requests reinstatement. The petitioner must file the request for reinstatement with the Board within thirty (30) days of the date on which the decision on modification is issued, and the request must be identified by the Board's docket number, BRB No. 23-0065 BLA. If reinstatement is requested, the Board will consider only the issues raised in the appeal of the Decision and Order Denying Benefits issued on October 03, 2022.

In the event the ALJ denies modification and the petitioner wishes the Board to consider not only the original appeal, but also whether the ALJ erred in denying modification, the petitioner must file a Notice of Appeal of the decision denying modification, in addition to the request for reinstatement. The petitioner must file the Notice of Appeal with the Board within thirty (30) days of the date on which the decision on modification is filed. 20 C.F.R. §802.205. The appeal of the decision on modification

will be assigned a new docket number and will be consolidated with the appeal assigned BRB No. 23-0065 BLA.

In the event the ALJ grants modification, any party who is aggrieved by the decision granting modification may file an appeal with the Board within thirty (30) days of the date the decision granting modification is filed. 20 C.F.R. §§802.205, 802.301(c).

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge