

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 20-0116 BLA
Case No. 2017-BLA-05230

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|-------------------------------|---|-------------------------|
| WARD PLETCHER, JR. |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| HOBET MINING, LLC |) | DATE ISSUED: 12/18/2020 |
| |) | |
| and |) | |
| |) | |
| ARCH COAL, INCORPORATED |) | |
| |) | |
| Employer/Carrier- |) | |
| Petitioners |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | ORDER |

On January 21, 2020, Employer filed a Motion to Consolidate, asking that the appeal in the above captioned case, BRB No. 20-0116 BLA, be consolidated for decision with two cases pending before the Board: *Melton v. Apogee Coal Co., Inc./Arch Coal, Inc.*, BRB 20-0115 BLA and *Workman v. Hobet Mining Co./Arch Coal, Inc.*, BRB No. 20-0132 BLA. The Director, Office of Workers' Compensation Programs (the Director), responds, opposing the motion.

On February 21, 2020, Employer filed a Motion to Remand and Suspend Briefing in the current case, alleging Claimant failed to comply with the Department of Labor's disclosure requirements under 20 C.F.R. §725.413 because he did not disclose draft reports that a physician prepared prior to his final report. Claimant responds, urging the Board to deny Employer's request, asserting the regulation does not require disclosure of draft reports of a testifying medical expert. On May 6, 2020, Claimant filed a Motion for Oral Argument, asserting it is appropriate and necessary to determine the proper interpretation of 20 C.F.R. §725.413. The Director responds that a limited remand is necessary for the administrative law judge to initially determine whether Claimant violated 20 C.F.R. §725.413 and, if so, what sanctions, if any, should be imposed. The Director disagrees, however, with Claimant's argument that there should be different disclosure requirements for testifying and non-testifying experts.

Because the administrative law judge did not consider the parties' arguments and render a finding on this issue, the proper course is to remand the case, as the Board lacks the authority in the first instance to make evidentiary determinations, render factual findings, or answer the questions presented based on rationales not addressed in the administrative law judge's Decision and Order Awarding Benefits. 20 C.F.R. §802.301(a). Consequently, we grant Employer's motion to remand the case for the limited purpose of addressing whether Claimant violated the disclosure requirements pursuant to 20 C.F.R.

§725.413 and, if a violation is found, determining whether sanctions are appropriate.¹ Thus, we reject Claimant's motion for oral argument. As this case will be remanded to the administrative law judge, Employer's motion to consolidate is moot.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

¹ If the administrative law judge finds a violation, he should also consider appropriate remedial evidentiary rulings. If the administrative law judge's evidentiary rulings change the medical evidence in the record or the weight given to that evidence, he must re-evaluate Claimant's entitlement to benefits.