

BRB No. 02-0710 BLA

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| JENNINGS WATTS |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | DATE ISSUED: |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Respondent |) | DECISION and ORDER |

Appeal of the Decision and Order on Remand of Daniel J. Roketenetz,
Administrative Law Judge, United States Department of Labor.

Jennings Watts, Littcarr, Kentucky, *pro se*.

Jeffrey S. Goldberg (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers= Compensation Programs, United States Department of Labor.

Before: SMITH, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order on

¹Claimant is Jennings Watts, the miner, who initially filed a Part B claim for benefits with the Social Security Administration on December 12, 1972, which was denied on December 22, 1976. Director=s Exhibit 26. Claimant filed the instant claim for benefits with the Department of Labor on February 19, 1976. Director=s Exhibit 1. After denials by the administrative law judge in 1987, 1991, and 1994, this claim was denied by the administrative law judge on February 28, 1996, and affirmed by the Board on appeal. Director=s Exhibits 65, 70; *Watts v. Director, OWCP*, BRB No. 96-0846 BLA (Jan. 29, 1997)(unpub.). Claimant timely filed a petition for modification pursuant to 20 C.F.R. ' 725.310 (2000) on September 30, 1997. Director=s Exhibit 75.

Remand (1998-BLA-831) of Administrative Law Judge Daniel J. Roketenetz denying claimant=s request for modification and 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 is before the Board for the sixth time. The procedural history of this case is not dispositive herein. On remand, in accordance with the Board=s instructions in *Watts v. Director, OWCP*, BRB No. 99-0764 BLA (Apr. 21, 2000)(unpub.), the administrative law judge found that claimant established less than ten years of coal mine employment and consequently, entitlement pursuant to 20 C.F.R. Part 727 was precluded. Accordingly, modification and benefits were denied. In this appeal, claimant generally contends that he is entitled to benefits. The Director, Office of Workers= Compensation Programs, responds, urging affirmance of the administrative law judge=s length of coal mine employment finding and his denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. ' 921(b)(3), as

On modification, the administrative law judge found that because the newly submitted evidence, considered in conjunction with the prior evidence, was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' '718.202(a)(4) or 410.414 (2000), claimant failed to establish either a change in conditions or a mistake in a determination of fact pursuant to 20 C.F.R. ' 725.310 (2000). Accordingly, the administrative law judge denied benefits in his Decision and Order as well as on reconsideration.

On appeal, the Board affirmed the administrative law judge=s findings that entitlement was not established pursuant to 20 C.F.R. Parts 410 and 718, but vacated the administrative law judge=s findings regarding the length of claimant=s coal mine employment and remanded the case for the administrative law judge to reconsider the evidence relevant to this issue to determine the length of claimant=s coal mine employment and, if necessary, *i.e.*, if claimant established at least ten years of coal mine employment, to determine whether claimant established invocation of the interim presumption pursuant to 20 C.F.R. ' 727.203(a). *Watts v. Director, OWCP*, BRB No. 99-0764 BLA (Apr. 21, 2000)(unpub.). The Board subsequently denied claimant=s multiple requests for reconsideration by Orders dated June 21, 2000, November 21, 2000, April 27, 2001, and September 25, 2001.

incorporated into the Act by 30 U.S.C. ' 932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order on Remand, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error therein.

With respect to the administrative law judge's findings regarding the length of claimant's coal mine employment, claimant bears the burden of proof to establish the number of years actually worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709 (1985); *Shelesky v. Director, OWCP*, 7 BLR 1-34 (1984); *Smith v. National Mines Corp.*, 7 BLR 1-803 (1985); *Miller v. Director, OWCP*, 7 BLR 1-693 (1985); *Maggard v. Director, OWCP*, 6 BLR 1-285 (1983). The Board will uphold the administrative law judge's length of coal mine employment determination if it is based on a reasonable method of computation and supported by substantial evidence in the record considered as a whole. *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986); *Smith, supra*; *Miller, supra*; *Maggard, supra*.

Claimant alleged eleven years of coal mine employment on his application for black lung benefits in the instant claim. Decision and Order on Remand at 2; Director's Exhibit 1. The administrative law judge discussed the evidence pertaining to claimant's coal mine employment, which consisted of statements claimant made to physicians and on the application for benefits as well his prior hearing testimonies, affidavits regarding his employment history from family members, and Social Security Administration (SSA) earnings records. Decision and Order on Remand at 2.

The administrative law judge credited claimant with nine and three-quarters years of qualifying coal mine employment, based on the evidence he found to be credible. Decision and Order at 2-3. Specifically, the administrative law judge, within a proper exercise of his discretion, relied upon claimant's testimony and the documented evidence in the record in crediting claimant with two years of qualifying coal mine employment from 1940 to July 1942 with Troy Mining. Decision and Order on Remand at 2-3. Next, relying on the SSA records, the administrative law judge credited claimant with three and three-quarters years of qualifying coal mine employment for the period between 1945 and 1949 with Blue Bird Mining Company. Decision and Order on Remand at 3; Director's Exhibits 2-3. The administrative law judge also credited claimant with four years of qualifying coal mine employment from 1953 to 1956 with Amburgey Coal Company based on claimant's testimony, noting

that he was accepting the evidence in the light most favorable to claimant. Decision and Order on Remand at 3.

The administrative law judge's determination with respect to the length of coal mine employment is the product of a reasonable method of computation. We, therefore, affirm the administrative law judge's method of computation and his length of coal mine employment finding, as it is rational and supported by substantial evidence. *Vickery, supra*. Because claimant has less than ten years of qualifying coal mine employment, we also affirm the administrative law judge's finding that claimant cannot establish invocation of the interim presumption contained in 20 C.F.R. Part 727, and we affirm the denial of modification and benefits.

Accordingly, the Decision and Order on Remand of the administrative law judge denying modification and benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge