

BRB No. 04-528 BLA
Case No. 03-BLA-5987

LAMAR A. LENIG)
) DATE ISSUED: August 31, 2004
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT)
 OF LABOR)
)
 Respondent) ORDER

On June 25, 2004, the Board received claimant's motion to remand the instant case to the district director for modification proceedings. However, due to a clerical error, the motion was not associated with the file. As a result, the Board inadvertently dismissed the appeal as abandoned by Order dated June 28, 2004. 20 C.F.R. §§802.211, 802.218, 802.402(a). The Board rescinds its Order of June 28, 2004, and reinstates claimant's appeal.

Claimant's motion for remand is, therefore, granted. The appeal is hereby dismissed and the case is remanded to the Office of the District Director for modification proceedings. 20 C.F.R. §725.310. This case will be reinstated by the Board only if petitioner requests reinstatement. The request for reinstatement must be filed with the Board within thirty (30) days from the date the Order on modification is filed and must be identified by the Board's docket number 04-528 BLA. The request for reinstatement must be served on all parties. If reinstatement is requested, the Board will consider only the issues raised in petitioner's appeal of the original decision.

After the request for modification is processed by the district director, the case may be transferred to an administrative law judge for a hearing pursuant to the regulations. In the event the administrative law judge denies modification and petitioner wishes the Board to consider not only the original appeal, but also whether the administrative law judge erred in denying modification a Notice of Appeal of the Order denying modification must be filed in addition to the request for reinstatement within thirty (30) days from the date the Order on modification is filed. 20 C.F.R. §802.205.

In the event an administrative law judge 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.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge