

BRB No. 99-0375 BLA

MOUNTIE LOYD)
)
 Claimant-Petitioner))
)
 v.)
)
 RAINBOW MINING COMPANY,) DATE ISSUED:
 INCORPORATED)
)
 and)
)
 QUEEN ANNE COAL COMPANY)
)
 and)
)
 OLD REPUBLIC INSURANCE)
 COMPANY, INCORPORATED)
)
 and)
)
 LIBERTY MUTUAL INSURANCE)
 COMPANY)
)
 Employers/Carriers)
 Respondents))
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Order of Dismissal of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Mountie Loyd, LaFollette, Tennessee, *pro se*.

Michael J. Pollack (Arter & Hadden, LLP), Washington, D.C., for employer, Rainbow Mining Company, Incorporated.

Debra L. Fulton and Robert L. Kahn (Frantz, McConnell & Seymour), Knoxville, Tennessee, for employer, Queen Anne Coal Company.

Dorothy L. Page (Henry L. Solano, 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: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Order of Dismissal (98-BLA-0969) of Administrative Law Judge Jeffrey Tureck 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). The administrative law judge found that claimant failed to respond to an Order to Show Cause, issued October 20, 1998, and that this failure to respond required dismissal of the claim. Both employers, Rainbow Mining Company, Inc. (Rainbow Mining) and Queen Anne Coal Company (Queen Anne Coal), have responded to claimant's appeal, urging affirmance of the administrative law judge's dismissal. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, responds that dismissal is proper and that he will not participate further.

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. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-361 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant filed the instant duplicate claim on May 8, 1997. Director's Exhibit 1.¹ After denial by the district director, Director's Exhibits 11, 12, claimant requested

¹Claimant initially filed a claim on June 26, 1972, Director's Exhibit 24. This claim was ultimately finally denied on November 9, 1984, because claimant failed to establish any of the elements of entitlement. Director's Exhibit 24. Claimant filed a second claim on

a formal hearing before the Office of Administrative Law Judges, Director's Exhibit 23. On August 20, 1998, the administrative law judge issued an "Order Compelling Discovery and Continuing Hearing."² In the Order, claimant was instructed to sign and return the medical authorization request and to complete the interrogatories submitted by Queen Anne Coal. Claimant was also ordered to appear at and submit to a medical examination scheduled by Rainbow Mining. On August 12, 1998, Rainbow Mining submitted a motion seeking to compel claimant to attend a medical examination, or in the alternative, to dismiss the claim as claimant failed to attend a previously scheduled medical examination with Dr. Dahhan. In a subsequent motion, dated September 2, 1998, Rainbow Mining asserted that claimant failed to appear for a scheduled deposition. Finally, in a Motion to Dismiss dated October 10, 1998, Rainbow Mining indicated that claimant failed to keep a second medical examination with Dr. Dahhan. Subsequently, Queen Anne Coal joined the motion to dismiss. On October 20, 1998, the administrative law judge issued an Order to Show Cause as to why the case should not be dismissed. The administrative law judge stated that, pursuant to 20 C.F.R. §725.465(a)(2), the claim would be dismissed absent a showing of good cause by claimant for his failure to comply with the administrative law judge's previous Order. Claimant failed to respond to the Order to Show Cause and the administrative law judge issued his Order of Dismissal.

Pursuant to 20 C.F.R. §725.465(a), an administrative law judge may dismiss a

November 19, 1986, Director's Exhibit 25. This second claim was denied, on May 11, 1987, because claimant failed to establish any of the elements of entitlement, and because claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309, Director's Exhibit 25. No further action was taken until the filing of the instant claim on May, 8, 1997.

²The order was issued in response to Queen Anne Coal's motion to dismiss the case due to abandonment based on claimant's failure to sign and return a medical authorization and respond to interrogatories and also in response to Rainbow Mining's motion to compel claimant to attend a medical examination he had failed to attend previously.

claim “upon the failure of the claimant to comply with a lawful order of the administrative law judge....” 20 C.F.R. §725.465(a)(2). Here, claimant twice failed to comply with the administrative law judge’s Order to submit to a medical examination scheduled by employer, which claimant is required to do under the Act. See 20 C.F.R. §§725.409, 725.414. Upon claimant’s failure to appear for a medical examination, the administrative law judge properly issued an Order to Show Cause as to why the claim should not be dismissed. 20 C.F.R. §725.465(c). Subsequently, inasmuch as claimant failed to respond to the Order to Show Cause, the administrative law judge properly issued his Order of Dismissal. 20 C.F.R. §725.465(a)(2).

Accordingly, the administrative law judge’s Order of Dismissal is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge