

BRB No. 08-0859 BLA

K.C.)
)
 Claimant-Respondent)
)
 v.)
)
 NAVISTAR C/O NAVISTAR)
 INTERNATIONAL)
) DATE ISSUED: 07/23/2009
 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order – Awarding Benefits of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Leroy Lewis (Law Office of Phillip Lewis), Hyden, Kentucky, for claimant.

H. Kent Hendrickson (Rice, Hendrickson & Williams), Harlan, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (04-BLA-6636) of Administrative Law Judge Richard K. Malamphy rendered on a subsequent 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 is the second time this case is before the Board.¹ In the Board's previous decision, pursuant to employer's appeal, the

¹ The Board set forth previously this claim's full procedural history. *K.C. v. Navistar*, BRB No. 07-0136 BLA, slip op. at 2 (Oct. 30, 2007)(unpub). Our prior discussion of the procedural history is incorporated by reference.

Board vacated the administrative law judge's findings that the instant subsequent claim was timely filed pursuant to 20 C.F.R. §725.308, and that the newly submitted medical opinion evidence established total disability under 20 C.F.R. 718.204(b)(2)(iv) and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). *K.C. v. Navistar*, BRB No. 07-0136 BLA, slip op. at 5-9 (Oct. 30, 2007)(unpub). Accordingly, the Board remanded the case for further consideration of those issues.

On August 22, 2008, the administrative law judge reissued the same decision that the Board had vacated on October 30, 2007. Aside from the date of issuance, the administrative law judge's August 22, 2008 Decision and Order – Awarding Benefits is identical to his September 14, 2006 Decision and Order – Awarding Benefits. The administrative law judge's decision bearing the date stamp of August 22, 2008 made no reference to the Board's decision or its remand instructions.

On appeal, employer asserts that, although the administrative law judge's reissuance of his original Decision and Order "was no doubt a mistake," his failure to address the Board's remand instructions constitutes reversible error. Employer's Brief at 1. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs has declined to file a response in this appeal.

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

Employer argues that the administrative law judge's reissuance of the decision that the Board previously vacated constitutes reversible error. Although the administrative law judge's reissuance of the same Decision and Order was apparently unintentional, his decision issued on August 22, 2008 does not address the Board's remand instructions. *See Hall v. Director, OWCP*, 12 BLR 1-80, 1-82 (1988). Consequently, we must vacate the administrative law judge's award of benefits for the same reasons that the Board previously provided, *K.C.*, BRB No. 07-0136 BLA, slip op. at 5-9, and remand this case for further consideration. On remand, the administrative law judge must address the Board's remand instructions and explain his findings. *K.C.*, BRB No. 07-0136 BLA, slip op. at 5-9.

Accordingly, the administrative law judge's Decision and Order – Awarding Benefits is vacated and we remand this case to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge