

BRB No. 05-0199 BLA

MONT F. WORKMAN)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 06/22/2005
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Order of Dismissal of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

Mont F. Workman, Chapmanville, West Virginia, *pro se*.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the October 12, 2004 Order of Dismissal (2004-BLA-5443) of Administrative Law Judge Janice K. Bullard in 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 dismissed the claim after claimant or a representative failed to attend the formal hearing and also failed to respond to the administrative law judge's Order to show cause why the claim should not be dismissed for failure to attend the hearing pursuant to 20 C.F.R. §725.465.

In his letter to the Board appealing the Order of Dismissal, claimant states that he had been too ill to attend the hearing and had been unable to find an attorney to represent him. In response to claimant's appeal, the Director, Office of Workers' Compensation Programs, urges affirmance of the administrative law judge's Order of Dismissal as within a reasonable exercise of her discretion.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989). 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 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).

Claimant filed his application for benefits on October 8, 2002, Director's Exhibit 1, which the district director denied on September 10, 2003. Director's Exhibit 19. Claimant requested a formal hearing before an administrative law judge, Director's Exhibit 20, and the case was transferred to the Office of Administrative Law Judges. Director's Exhibit 21. On May 4, 2004, the administrative law judge mailed a Notice of Hearing to claimant, informing him that his claim was scheduled for hearing on September 1, 2004 in Charleston, West Virginia. At the scheduled time and place of the hearing, neither claimant nor a representative appeared. Hearing Transcript at 4-5. The administrative law judge issued an Order to Show Cause on September 10, 2004, directing that claimant show cause no later than September 30, 2004, why his claim should not be dismissed for failure to appear at the scheduled hearing.

Claimant failed to respond to the administrative law judge's Order to Show Cause. Consequently, on October 12, 2004, the administrative law judge issued her Order of Dismissal. In her Order of Dismissal, the administrative law judge stated that as of the date of the Order, neither claimant nor a representative had responded to the Order to Show Cause. Order of Dismissal at 1. Therefore, the administrative law judge dismissed the claim because claimant did not show good cause for his failure to comply with the administrative law judge's lawful order to appear at the scheduled hearing pursuant to 20 C.F.R. §725.465(c). *Id.*

Section 725.465 provides in pertinent part:

- (a) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim:

- (1) Upon the failure of the claimant or his or her representative to attend a hearing without good cause;
- (2) Upon the failure of the claimant to comply with a lawful order of the administrative law judge

20 C.F.R. §725.465(a). The pertinent regulations, however, first require the administrative law judge to issue an Order to Show Cause why dismissal should not occur and to afford all the parties a reasonable amount of time in which to respond. Thereafter, the regulations provide the administrative law judge with the discretion to take such action as is appropriate in ruling on the issue. 20 C.F.R. §725.465(c).

In this case, the administrative law judge provided claimant an opportunity to show good cause for his failure to attend the hearing and a reasonable amount of time to establish it. *See Order To Show Cause Why Case Should Not Be Dismissed* dated September 10, 2004; 20 C.F.R. §725.465(c). Because claimant failed to appear at the hearing scheduled on September 1, 2004 and did not respond to the administrative law judge's Order to Show Cause, we hold that the administrative law judge's determination that claimant did not demonstrate good cause for failing to appear at the scheduled hearing, was a proper exercise of her discretion.¹ *Id.*; *Clevinger v. Regina Fuel Co.*, 8 BLR 1-1 (1985); *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(*en banc*); *Itell v. Ritchey Trucking Co.*, 8 BLR 1-356 (1985). Consequently, we hold that the administrative law judge's decision to dismiss this case is in accordance with the law, and, therefore, is affirmed. 20 C.F.R. §725.465(a)(1), (a)(2), (c); *Clevinger*, 8 BLR at 1-2; *cf. Howell v. Director, OWCP*, 7 BLR 1-259 (1984).

To the extent that claimant's letter to the Board shows an intent to pursue his claim, claimant may file a request for modification. We note that all requests for modification must be filed with the district director pursuant to 20 C.F.R. §725.310. 20 C.F.R. §725.310; *Lee v. Consolidation Coal Co.*, 843 F.2d 159, 11 BLR 2-106 (4th Cir. 1988); *Ashworth v. Blue Diamond Coal Co.*, 11 BLR 1-167 (1988); *Hoskins v. Director, OWCP*, 11 BLR 1-144 (1988).

¹ Claimant's letter to the Board, appealing the dismissal of his claim, states that he was unable to attend the hearing because of severe illness. However, the record is devoid of evidence that claimant informed the administrative law judge of his illness prior to the scheduled hearing or in response to the administrative law judge's direct inquiry in her Order to Show Cause.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge