

BRB No. 04-260 BLA
Case No. 93-BLA-0045

JAMES TYLER)	
)	DATE ISSUED: March 22, 2004
Claimant-Respondent)	
)	
v.)	
)	
PEABODY COAL COMPANY)	
)	
and)	
)	
OLD REPUBLIC INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Party-in-Interest)	ORDER

Employer has filed a motion to remand this case to the district director, and to hold the briefing schedule in abeyance. No response to employer's motion has been filed. In support of the motion, employer notes that in its last Decision and Order in this case, the Board remanded the case to the Office of Administrative Law Judges for further consideration of claimant's entitlement to medical benefits. The Board also stated that if the administrative law judge found claimant entitled to medical benefits, that remand to the district director was required for a determination of whether claimant's non-compliance with the notice requirements of the regulation found at 20 C.F.R §725.706(b) should be excused. See *Tyler v. Peabody Coal Co.*, BRB No. 00-0443 BLA (Jan. 18, 2001)(unpub.).

On remand, the administrative law judge found claimant and/or the Trust Fund entitled to reimbursement for claimant's medical expenses related to his treatment for pneumoconiosis. The administrative law judge also ordered the case remanded to the district director for further appropriate action consistent with his decision and the instructions of the Benefits Review Board. A motion for reconsideration was then filed by the Director, seeking clarification of the amount owed to the Trust Fund. On

November 25, 2003, a Supplemental Decision and Order granting Director's motion for reconsideration and clarification was issued which found the amount at issue to be \$49,560.16. Employer thereafter filed a timely appeal of these orders with the Board.

Employer now requests that this case be remanded to the district director, consistent with the directions of the Board and the administrative law judge's Decision and Order. Employer states that it filed the present appeal to preserve its objections to the findings of the administrative law judge, and requests that the briefing schedule in this case be held in abeyance until the district director issues his findings pursuant to the instructions of the administrative law judge and the Board.

In light of the Board's decision in BRB No. 00-443 BLA, and the instructions of the administrative law judge on remand, employer's motion to remand is granted, appeal dismissed and case is remanded to the district director for further proceedings consistent with the decision of the Board and the administrative law judge.

Any party who is dissatisfied with the findings of the district director may appeal those findings to the Board. 20 C.F.R. §802.201(a). Additionally, the Board will reinstate the current appeal only if petitioner requests reinstatement. The request for reinstatement must be filed with the Board within thirty (30) days from the date a decision is filed and must be identified by BRB No. 04-260 BLA. The request for reinstatement must be served on all parties. If reinstatement is requested, the Board will consider only the issues raised in employer's appeal of the Decision and Order filed November 25, 2003. In light of the above, employer's motion to hold in abeyance is moot.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge