

BRB Nos. 06-0420 BLA
and 06-0606 BLA

LENVILLE BOGGS)
)
 Claimant-Petitioner)
)
 v.)
)
 BRANHAM & BAKER UNDERGROUND) DATE ISSUED: 05/25/2007
 CORPORATION)
)
 Employer-Respondent) BRB No. 06-0420 BLA
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)
)
 LENVILLE BOGGS)
)
 Claimant)
)
 v.)
)
 BRANHAM & BAKER UNDERGROUND) BRB No. 06-0606 BLA
 CORPORATION)
)
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Petitioner) DECISION and ORDER

Appeals of the Decision and Order, the Order Denying Request for Reconsideration, and the Order Denying Second Request for Reconsideration of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, P.S.C., Pikeville, Kentucky, for claimant.

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

Rita Roppolo (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-0558) of Administrative Law Judge Janice K. Bullard denying benefits 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 credited claimant with at least twenty-one years of qualifying coal mine employment, and adjudicated this claim, filed on April 16, 2002, pursuant to the regulatory provisions at 20 C.F.R. Part 718. In her Decision and Order issued on February 8, 2006 and filed in the office of the district director on February 13, 2006, the administrative law judge found that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii), (iv), but failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or disability causation pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

Claimant appealed the denial of benefits on February 15, 2006, and the case was assigned BRB No. 06-0420 BLA. While claimant's appeal was pending before the Board, the Director, Office of Workers' Compensation Programs (the Director), filed a motion for reconsideration with the administrative law judge on March 10, 2006. By Order issued on April 5, 2006, the administrative law judge denied reconsideration, finding that she no longer had jurisdiction over the matter because claimant had already filed an appeal with the Board before the Director sought reconsideration, and further finding that the Director's motion was untimely, as it was filed more than ten days after the entry of the Decision and Order. The administrative law judge subsequently denied the Director's second request for reconsideration by Order issued on April 24, 2006, holding that, notwithstanding the fact that the Director sought reconsideration within thirty days of the date the Decision and Order was issued, claimant's filing of an appeal

to the Board deprived the administrative law judge of jurisdiction to consider the merits of the Director's motions for reconsideration. The Director then appealed the denial of reconsideration to the Board, and the case was assigned BRB No. 06-0606 BLA. By Order issued on November 9, 2006, the Board consolidated the two appeals for purposes of decision only.

The Director appeals the administrative law judge's Order Denying Request for Reconsideration and Order Denying Second Request for Reconsideration. The Director contends that the administrative law judge erred in finding that the motion for reconsideration was untimely filed on March 10, 2006, and that her jurisdiction ended when claimant mailed his appeal of the Decision and Order to the Board on February 15, 2006. The Director argues that his motion was timely and that an intervening Board appeal does not deprive an administrative law judge of jurisdiction to consider a timely motion for reconsideration. Thus, the Director argues that this case must be remanded to the administrative law judge for consideration of the merits of the Director's motion. We agree. The Director's motion for reconsideration was mailed on March 10, 2006, within thirty days after the filing of the Decision and Order in the office of the district director on February 13, 2006, and thus was timely filed. *See* 20 C.F.R. §§725.479(b), 802.206(b)(2); *Tobrey v Director, OWCP*, 7 BLR 1-407 (1984). Under the Board's Rules of Practice and Procedure, where a timely motion for reconsideration of an administrative law judge's decision has been filed, "any appeal to the Board, whether filed prior to or subsequent to the filing of the timely motion for reconsideration, shall be dismissed without prejudice as premature." 20 C.F.R. §802.206(f). As the administrative law judge had jurisdiction to consider the Director's timely motion, we vacate the administrative law judge's Order Denying Request for Reconsideration and Order Denying Second Request for Reconsideration, and remand this case for further findings on the merits of the Director's motion. Consequently, claimant's appeal of the administrative law judge's Decision and Order denying benefits is dismissed without prejudice as premature. *Id.*

Accordingly, the administrative law judge's Order Denying Request for Reconsideration and her Order Denying Second Request for Reconsideration are vacated, and this case is remanded for the administrative law judge to consider the merits of the Director's motion for reconsideration consistent with this opinion. Claimant's appeal of the administrative law judge's Decision and Order denying benefits is dismissed without prejudice as premature.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge