

BRB No. 00-0283 BLA

DAVE MILLS)
)
 Claimant-Petitioner)
)
 v.)
)
 MARTIN COUNTY COAL CORPORATION)
) DATE ISSUED:
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Order of Dismissal of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Dave Mills, Inez Kentucky, *pro se*.

Natalie D. Brown (Jackson & Kelly), Lexington, Kentucky, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals, without the aid of counsel, the Order of Dismissal (99-BLA-0991) of Administrative Law Judge Daniel J. Roketenetz dismissing 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). Employer responds, urging that the Order of Dismissal be affirmed. The Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, has not responded to this appeal.

In an appeal filed by a claimant without the aid of counsel, the Board will consider the issue raised to be whether the Order below is supported by substantial evidence, *see Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1985). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant filed a claim on August 18, 1997, Director's Exhibit 1. On October 6, 1997, the district director issued an Order to Show Cause why the claim should not be denied by reason of abandonment pursuant to 20 C.F.R. §725.409 within thirty days of the Order's issuance for claimant's failure to comply with the Department of Labor's request to provide evidence essential to processing the claim, Director's Exhibit 8. Claimant did not timely respond to the Order and his claim was, therefore, denied. Subsequently, claimant filed a request for modification on March 17, 1998, Director's Exhibits 9-10. Claimant ultimately requested a hearing before an administrative law judge, *see* Director's Exhibits 21, 30, and a Notice of Hearing was mailed to claimant on August 5, 1999, informing claimant that a hearing was scheduled in his claim on October 5, 1999.

At the hearing on October 5, 1999, neither claimant, nor anyone representing claimant, appeared. Thus, the administrative law judge issued an Order to Show Cause on October 7, 1999, requesting that claimant show cause on or before October 21, 1999, why his claim should not be dismissed pursuant to 20 C.F.R. §725.465 for his failure to appear at the scheduled hearing. Inasmuch as claimant did not respond to the Order to Show Cause, the administrative law judge issued an Order of Dismissal on October 27, 1999, at issue herein.

On appeal, claimant does not provide any explanation for his failure to appear at the hearing and/or to respond to the administrative law judge's Order to Show Cause, but merely generally addresses whether the evidence of record is sufficient to establish entitlement. 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...

20 C.F.R. §725.465. The administrative law judge provided claimant an opportunity and a reasonable time to establish good cause for his failure to attend the hearing in this case by issuing an Order to Show Cause, *see* 20 C.F.R. §725.465(c). However, claimant failed to respond. Consequently, we hold that, under the facts of this case, there was no abuse of discretion in the administrative law judge's actions and affirm the dismissal of this case, *see*

20 C.F.R. §725.465; *Clevinger v. Regina Fuel Co.*, 8 BLR 1-1 (1985); *see also Howell v. Director, OWCP*, 7 BLR 1-259 (1984).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge