

BRB No. 96-0576 BLA

ALAPHARE JARVIS)
(o/b/o the Estate of)
JAMES JARVIS))
)
Claimant-Petitioner)
)
v.)
)
TRIPLE W FUELS, INCORPORATED)
)
and)
)
HARTFORD ACCIDENT & INDEMNITY) DATE ISSUED:
INSURANCE COMPANY)
)
Employer/Carrier-)
Respondents)
)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

Appeal of the Order of James L. Guill, Administrative Law Judge,
United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

John David Preston (Perry, Preston & Miller), Paintsville, Kentucky, for
employer.

Gary K. Stearman (J. Davitt McAteer, Acting Solicitor of Labor; Donald
S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate
Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH and
DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Order (94-BLA-1641) of Administrative Law Judge James L. Guill denying a motion for reconsideration 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). On June 30, 1995, Administrative Law Judge David A. Clarke, Jr., issued a Decision and Order awarding benefits on the miner's claim and denying benefits on the survivor's claim. Employer filed a petition for modification on August 24, 1995, requesting modification of its designation as responsible operator.

On September 20, 1995, Judge Clark issued an Order of Remand, remanding the case to the district director with instructions to reopen the record and receive evidence on the issues of when employer ceased coal mining operations at the subject site and when the deceased miner experienced his last qualifying exposure to coal dust. Claimant filed a motion for reconsideration which was denied in an Order by Associate Chief Administrative Law Judge James L. Guill on January 17, 1996. On appeal before the Board, claimant contends that the administrative law judge erred in denying the motion for reconsideration because employer's request for modification was untimely filed and was simply a re-argument of previously decided issues. Employer and the Director, Office of Workers' Compensation Programs (the Director), respond urging the Board to dismiss the appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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).

The Board has adopted the established federal practice of generally forbidding piecemeal appeals on interlocutory matters. *Christian v. Holmes & Narver, Inc.*, 1 BRBS 85 (1974); *see also Crabtree v. Bethlehem Mines Corp.*, 7 BLR 1-354 (1984). As a general rule, an order is not final where the case has been remanded because there is usually no conclusive judgement on the merits and the proceedings on remand could either resolve existing issues or generate new appealable issues.

In this case, the administrative law judge remanded the claim to the district director for the development of further evidence

¹Claimant is Alaphare Jarvis, the miner's widow. James Jarvis, the miner, filed a claim for benefits on April 15, 1991 and died on February 9, 1993. Director's Exhibits 1; 32. Claimant filed a survivor's claim on November 11, 1993. Director's Exhibit 32.

regarding the responsible operator issue and for consideration of employer's request for modification. The administrative law judge did not make any final determination on the merits of employer's petition for modification. Thus, employer's petition for modification is still pending and the administrative law judge's order denying claimant's request for reconsideration is an interlocutory order. As a result, because claimant can not appeal from an interlocutory Order, claimant's appeal is dismissed as it is premature and the case is remanded to the district director for consideration of employer's request for modification.

Accordingly, claimant's appeal is dismissed and the case is remanded to the district director for consideration of employer's modification request.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge