

BRB No. 04-635
Case No. 03-LHC-1124
OWCP No. 5-0091751

DIANA ELEY)
)
 Claimant-Respondent) DATE ISSUED: November 23, 2004
)
 v.)
)
 NEWPORT NEWS SHIPBUILDING)
 AND DRY DOCK COMPANY)
)
 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT)
 OF LABOR)
)
 Respondent) ORDER

By letter dated September 23, 2004, employer informed the Board that it filed a petition for modification with the Office of the District Director. Employer further notes that it does not believe a remand is warranted in the instant case unless and until the Administrative Law Judge indicates an error or change of condition has occurred pursuant to *Craig v. United Church of Christ*, 13 BRBS 567 (1981). The Director has responded contending that pursuant to the regulation found at 20 C.F.R. §802.301(c), remand is required.

Section 802.301 (c), of the Board's procedural regulations, provides that upon notification from a party that a petition for modification has been filed, the Board shall dismiss the case without prejudice. 20 C.F.R. §802.301 (c). The Board, therefore, dismisses this appeal and remands this case to the Office of District Director for modification proceedings.

After the request for modification is processed by the district director, the case may be transferred to an administrative law judge for a hearing pursuant to the regulations. Once a final decision on the petition for modification is issued by an administrative law judge the case may be reinstated if modification is denied. 20 C.F.R. §802.301 (c). The case will be reinstated by the Board only if employer requests reinstatement. The request for reinstatement must be filed with the

Board within thirty (30) days of the date the Order on modification is filed and must be identified by the Board's docket number, BRB No. 04-635.

In the event the administrative law judge denies modification and employer wishes the Board to consider not only the original appeal but also whether the administrative law judge erred in denying modification, a Notice of Appeal of the Order denying modification must be filed in addition to the request for reinstatement.

In the event the administrative law judge grants modification any party aggrieved by the Order granting modification may file an appeal with the Board within thirty (30) days of the date the Order granting modification is filed. 20 C.F.R. §802.205.

NANCY S. DOLDER. Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge