**U.S. Department of Labor**

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB Nos. 14-0256 BLA
and 14-0273 BLA

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| MARIAN MORGAN [1]<br>(o/b/o DONALD E. MORGAN, deceased) | ) | |
| Claimant-Respondent | ) | |
| v. | ) | |
| | ) | DATE ISSUED: 07/30/2015 |
| CONSOLIDATION COAL COMPANY | ) | |
| Employer-Petitioner | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeals of the Decision and Order on Remand, Order Denying Reconsideration, and Decision and Order on Modification of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Lynda D. Glagola (Lungs at Work), McMurray, Pennsylvania, lay representative, for claimant.

Margaret M. Scully (Thompson, Calkins & Sutter, LLC), Pittsburgh, Pennsylvania, for employer.

Michelle S. Gerdano (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for

[1] The miner died on November 26, 2012. Claimant's Exhibit 2. Claimant, the miner's surviving spouse, is pursuing the miner's claim. Decision and Order on Modification at 1 n.1.

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, BOGGS and GILLIGAN, Administrative Appeals Judges.

HALL, Chief Administrative Appeals Judge:

Employer appeals the Decision and Order on Remand, Order Denying Reconsideration, and Decision and Order on Modification (12-BLA-5306) of Administrative Law Judge Drew A. Swank awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on November 13, 2006,[2] and is before the Board for the second time.

In the initial decision, Administrative Law Judge Michael P. Lesniak credited the miner with at least thirteen years of coal mine employment,[3] and found that the medical opinion evidence established the existence of legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD)/emphysema due to both cigarette smoking and coal mine dust exposure. 20 C.F.R. §718.202(a)(4). Judge Lesniak also found that the evidence established that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). In light of those findings, Judge Lesniak also found that the miner established that one of the applicable conditions of entitlement had changed since the date upon which the denial of his prior claim became final. *See* 20 C.F.R. §725.309(c). Accordingly, Judge Lesniak awarded benefits.

Pursuant to employer's appeal, the Board held that Judge Lesniak, in finding that the medical opinion evidence established the existence of legal pneumoconiosis, permissibly accorded less weight to the opinions of Drs. Fino and Renn, that the miner's COPD/emphysema was unrelated to coal mine dust exposure, because he found that their opinions were inconsistent with the premises underlying the regulations.[4] *Morgan v.*

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[2] The miner's initial claim, filed on October 23, 2003, was denied by the district director for failure to establish any of the elements of entitlement. Director's Exhibit 1.

[3] The record indicates that the miner's coal mine employment was in Pennsylvania. Director's Exhibits 1, 7. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[4] The Board affirmed, as unchallenged on appeal, Administrative Law Judge Michael P. Lesniak's finding that the miner suffered from a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b), and his finding that one of

*Consolidation Coal Co.*, BRB No. 09-0739 BLA, slip op. at 8 (July 30, 2010) (unpub.). However, because Judge Lesniak failed to consider the evidence contained in the miner's first black lung claim, did not properly consider the length of the miner's smoking history, and did not specifically address whether the opinions of Drs. Jaworski, Celko, and Rasmussen were reasoned and documented, the Board vacated his finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and remanded the case for further consideration. *Morgan*, slip op. at 4, 9. The Board instructed Judge Lesniak, on remand, to reconsider the length of the miner's smoking history, and to make a specific determination as to whether the opinions of Drs. Celko, Jaworski, and Rasmussen, that the miner's COPD/emphysema was due to both cigarette smoking and coal mine dust exposure, were reasoned and documented. *Id.* The Board also vacated Judge Lesniak's finding that the evidence established that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), and instructed him to reconsider that issue. *Id.*

On remand, employer requested modification pursuant to 20 C.F.R. §725.310, and Judge Lesniak remanded the case to the district director for modification proceedings. Director's Exhibits 72, 74. After the parties submitted additional evidence, the district director denied employer's request for modification, and referred the case to the Office of Administrative Law Judges for a formal hearing. Director's Exhibits 85-87.

Because Judge Lesniak was unavailable, the case was reassigned, without objection, to Administrative Law Judge Drew A. Swank (the administrative law judge). The administrative law judge held a hearing on April 9, 2013, at which time he noted the "convoluted history" of the case. Hearing Transcript at 4. Specifically, the administrative law judge noted that, in addition to the Board's remand of Judge Lesniak's Decision and Order for further consideration, employer's request for modification was pending before him. *Id.* at 5.

In a Decision and Order on Remand dated March 7, 2014, the administrative law judge limited his consideration to the issues that the Board had instructed Judge Lesniak to reconsider because of the errors in the initial decision awarding benefits. The administrative law judge reasoned that, since the Board vacated the award of benefits, "consideration of . . . [e]mployer's modification request prior to the issuance of a Decision and Order on Remand would be premature." Decision and Order on Remand at 3. The administrative law judge found that the evidence established the existence of legal pneumoconiosis, in the form of COPD/emphysema due to both cigarette smoking and

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the applicable conditions of entitlement had changed since the date upon which the denial of the miner's prior claim became final. *Morgan v. Consolidation Coal Co.*, BRB No. 09-0739 BLA, slip op. at 3 n.4 (July 30, 2010) (unpub.).

coal mine dust exposure. The administrative law judge also found that the evidence established that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

After the issuance of the administrative law judge's March 7, 2014 Decision and Order on Remand, claimant moved to dismiss employer's request for modification. Employer moved for reconsideration of the administrative law judge's Decision and Order on Remand, asserting that the administrative law judge erred by not addressing its request for modification. By Order dated March 26, 2014, the administrative law judge denied both claimant's motion to dismiss employer's request for modification, and employer's motion for reconsideration.

On April 29, 2014, employer appealed the administrative law judge's Decision and Order on Remand and Order Denying Reconsideration to the Board.[5] The Board acknowledged employer's appeal on May 12, 2014, and requested that the district director immediately forward the official record of the case. The Board's docket number, BRB No. 14-0256 BLA, was assigned to employer's appeal.

While employer's appeal was pending before the Board, the administrative law judge issued his second decision, a Decision and Order on Modification dated June 2, 2014. The administrative law judge performed a de novo review of all of the evidence of record, including the new evidence admitted in connection with employer's request for modification. After crediting the miner with 13.33 years of coal mine employment, the administrative law judge again found that the medical opinion evidence established the existence of legal pneumoconiosis, in the form of COPD/emphysema due to both cigarette smoking and coal mine dust exposure. 20 C.F.R. §718.202(a)(4). The administrative law judge also found that the evidence established that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). In light of those findings, the administrative law judge denied employer's request for modification, and again awarded benefits.

Employer timely appealed the administrative law judge's Decision and Order on Modification to the Board. Employer's appeal was assigned the Board's docket number, BRB No. 14-0273 BLA. At employer's request, the Board consolidated this appeal with employer's pending appeal of the administrative law judge's Decision and Order on Remand.

[5] In its Notice of Appeal, which was mailed on April 24, 2014, employer did not inform the Board that its request for modification was pending before the administrative law judge. *See* 20 C.F.R. §802.301(c).

On appeal, employer contends that the administrative law judge erred by issuing a Decision and Order on Remand that did not address the modification request that was pending before him. Further, employer contends that the administrative law judge lacked jurisdiction to address employer's request for modification while employer's appeal of the administrative law judge's Decision and Order on Remand was before the Board. Employer also argues that the manner in which the administrative law judge adjudicated the claim on remand and employer's modification request deprived it of due process. Employer further contends that the administrative law judge erred in finding that the evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Employer also contends that the administrative law judge erred in excluding the 2013 supplemental depositions of Drs. Fino and Renn, submitted by employer on modification, on the grounds that they exceeded the evidentiary limitations at 20 C.F.R. §725.414. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, contending that any error deriving from the administrative law judge's issuance of two decisions was harmless, because employer cannot demonstrate that it was prejudiced thereby, and thus cannot establish that its due process rights were violated. The Director further argues that any error in the administrative law judge's exclusion of the supplemental depositions of Drs. Fino and Renn was harmless.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

In the first appeal, employer argues that the administrative law judge erred by issuing a Decision and Order on Remand that did not address employer's modification request. We agree. Once employer requested modification and the district director processed that request and referred the case to the Office of Administrative Law Judges for a hearing, the case was pending before the administrative law judge for a de novo review of factual determinations, on the record as developed by the parties on modification. *See Keating v. Director, OWCP*, 71 F.3d 1118, 1123, 20 BLR 2-53, 2-62-

63 (3d Cir. 1995). Section 22 of the Longshore Act, as incorporated by 30 U.S.C. §932(a), provides in relevant part:

> Upon his own initiative, or upon the application of any party in interest . . . on the ground of a change in conditions or because of a mistake in a determination of fact . . . the [administrative law judge] may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case . . . and . . . issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation.

33 U.S.C. §922. Section 22 "is a broad reopening provision that is available to employers and employees alike. Nothing in the statute or implementing regulation supports [the] suggestion that modification is an 'irregular procedure'" in the processing of a black lung claim. *King v. Jericol Mining, Inc*., 246 F.3d 822, 825, 22 BLR 2-305, 2-310 (6th Cir. 2001). To the contrary, the "modification procedure is flexible, potent, [and] easily invoked," *Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497, 22 BLR 2-1, 2-11 (4th Cir. 1999), and embodies a policy favoring accuracy of determination over finality. *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 541, 22 BLR 2-429, 2-444 (7th Cir. 2002). Thus, "[o]nce a request for modification is filed, no matter the grounds stated, if any, the [administrative law judge] has the authority, if not the duty, to reconsider all the evidence for any mistake of fact or change in conditions." *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230, 18 BLR 2-290, 2-296 (6th Cir. 1994).

Therefore, in this case, it is clear that once employer requested modification and the case was referred to the administrative law judge for a modification hearing, the posture of the case for decision was primarily a request for modification. The Board's remand instructions to Judge Lesniak, while still relevant, addressed only the record that existed prior to the institution of modification proceedings. Thus, it was not proper for the administrative law judge to issue only a Decision and Order on Remand, as it did not address all the issues in the case before him. *See Keating*, 71 F.3d at 1123, 20 BLR at 2-62 (holding that 20 C.F.R. §725.310 "empowers an administrative law judge to make a de novo review of factual determinations on a modification petition"); *Stanley*, 194 F.3d at 499, 22 BLR at 2-13 ("The sum of a de novo review and a de novo process is a new adjudication."). Had the Board been informed of employer's pending request for modification at the time that employer filed its appeal of the administrative law judge's Decision and Order on Remand, the Board would have been compelled to dismiss employer's appeal, and remand the case to the administrative law judge for his consideration of employer's modification request. *See* 20 C.F.R. §802.301(c). Because

the administrative law judge failed to address employer's request for modification in his Decision and Order on Remand, that decision is vacated.

Turning to employer's second appeal, we agree with employer that once it appealed the administrative law judge's Decision and Order on Remand and Order Denying Reconsideration to the Board, the administrative law judge lacked jurisdiction to issue his Decision and Order on Modification. Employer's Brief at 30-32. Once a party appeals an administrative law judge's decision to the Board, jurisdiction of the case is transferred to the Board, thereby depriving the administrative law judge of the authority to issue additional orders or decisions in that case. *See Colbert v. Nat'l Steel & Shipbuilding Co.*, 14 BRBS 465, 468 (1981) (holding that the administrative law judge lacked jurisdiction to hold a modification hearing and issue a decision, when an appeal of his show-cause order was before the Board); *see also Bartley v. L&M Coal Co.*, 7 BLR 1-243, 1-248 (1984); *Meeks v. Director, OWCP*, 6 BLR 1-794, 796 n.4 (1984). The reason for this rule is self-evident: An administrative law judge and the Board may not exercise simultaneous jurisdiction over a case. Thus, following the docketing of an appeal with the Board, the administrative law judge does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Because the administrative law judge lacked jurisdiction to issue his Decision and Order on Modification, it is void, and is therefore vacated.

Having vacated the administrative law judge's Decision and Order on Remand, and Decision and Order on Modification, we remand this case to the administrative law judge for further consideration.[6] On remand, the administrative law judge is instructed to issue a single decision in which he considers employer's request for modification, while bearing in mind the Board's remand instructions set forth in its previous Decision and Order, so that the errors that were identified by the Board do not recur. *See Morgan*, slip op. at 4-6, 8-9. Before issuing that decision, the administrative law judge, on remand, should first clarify the record on modification by issuing an Order, consistent with *L.P.* [*Preston*] *v. Amherst Coal Co.*, 24 BLR 1-57, 1-63 (2008) (en banc), in which he rules on the admissibility of the evidence submitted on modification, advises the parties of his rulings, and provides them with an opportunity to respond appropriately. We also instruct the administrative law judge to provide an explanation for his determination regarding the admissibility of the supplemental 2013 deposition testimony of Drs. Fino and Renn submitted by employer on modification. *See* 20 C.F.R. §725.414(c).

[6] In view of our disposition of this case, we need not address employer's argument that the manner in which the administrative law judge adjudicated the case violated employer's due process rights. Employer's Brief at 25.

With respect to the consideration of employer's modification request, we instruct the administrative law judge as follows: An administrative law judge may grant modification based on a change in conditions or because of a mistake in a determination of fact. 20 C.F.R. §725.310(a). The administrative law judge has the authority to reconsider all the evidence for any mistake in fact, including whether the ultimate fact of entitlement was wrongly decided. *Keating*, 71 F.3d at 1123, 20 BLR at 2-63. As the party seeking modification, employer is the "proponent of the order with the burden of establishing a [mistake in a determination of fact]" with respect to any of the previously established facts in this case that it seeks to modify.[7] *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 139 (1997); *see also Branham v. BethEnergy Mines*, 20 BLR 1-27, 1-34 (1996). Moreover, although an administrative law judge may find a mistake in a determination of fact, the administrative law judge must ultimately determine whether granting employer's modification request will render justice under the Act. *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 255 (1971). As to the elements of entitlement that claimant has not yet established because the Board vacated Judge Lesniak's previous findings of pneumoconiosis and disability causation, claimant retains the burden to establish those elements by a preponderance of the evidence, based on the record that the parties have developed on modification. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

[7] The Board previously affirmed, as unchallenged, Judge Lesniak's findings that the miner suffered from a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b), and that one of the applicable conditions of entitlement had changed since the date upon which the denial of the miner's prior claim became final. *Morgan*, slip op. at 3 n.4. The Board also rejected employer's allegations of error, and held that Judge Lesniak, in addressing whether the medical opinion evidence established the existence of legal pneumoconiosis, permissibly accorded less weight to the opinions of Drs. Fino and Renn, that the miner's COPD/emphysema was unrelated to coal mine dust exposure, because he found that their opinions were inconsistent with the premises underlying the regulations. *Morgan*, slip op. at 8.

Accordingly, the administrative law judge's Decision and Order on Remand, Order Denying Reconsideration, and Decision and Order on Modification are vacated, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

I concur.

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RYAN GILLIGAN
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring and dissenting:

I concur in the majority's determination that the administrative law judge lacked jurisdiction to issue a Decision and Order on Modification once employer appealed the administrative law judge's Decision and Order on Remand and Order Denying Reconsideration to the Board. However, I respectfully dissent from the determination that employer's request for modification, filed on remand before the administrative law judge could issue a decision, transformed the case to a modification proceeding that displaced the need to issue a Decision and Order on Remand.

To the contrary, employer's modification request was premature. Section 22 of the Longshore Act, the basis for modification, provides for the "review [of] a compensation case . . . ." 30 U.S.C. §922, as incorporated by 30 U.S.C. §932(a). The use of the term "compensation case" contemplates that there have been an order or decision that disposed of claimant's black lung claim. This concept is supported by the implementing regulation, which authorizes the fact-finder to "reconsider *the terms of an award or denial of benefits.*" 20 C.F.R. §725.310(a) (emphasis added). Here, before employer filed its modification request, the Board had vacated, in part, the previous administrative law judge's Decision and Order awarding benefits, and remanded the case for determination of whether claimant established the existence of pneumoconiosis, and that his total disability is due to pneumoconiosis. Thus, there was, as yet, no decision by

an administrative law judge either awarding or denying benefits on the claim.[8] While an administrative law judge has the authority on modification to review prior factual determinations, *Keating v. Director, OWCP*, 71 F.3d 1118, 1123, 20 BLR 2-53, 2-62-63 (3d Cir. 1995), what is being modified is the compensation decision in the case. Thus, there must first be a decision to modify.[9] In this case, because there was not yet a decision in the case, employer's modification request was premature.

Because employer's modification request was premature, I would focus on whether the administrative law judge's Decision and Order on Remand, standing alone, is supported by substantial evidence and in accordance with law. Based on the arguments raised by employer, I would hold that the Decision and Order on Remand is not in accordance with law. Employer correctly argues that the administrative law judge considered evidence submitted by the parties on remand, at the modification hearing, which did not relate to the issues to be decided in the Decision and Order on Remand. Specifically, the administrative law judge admitted and considered, among other exhibits,

[8] There was an initial Decision and Order by the district director awarding benefits, but employer requested a hearing, preventing that decision from becoming effective. 20 C.F.R. §725.502(a)(2); *see Rothwell v. Heritage Coal Co.*, 25 BLR 1-141, 1-146 n.4 (2014); Director's Exhibits 30, 31. Moreover, an administrative law judge proceeds de novo and thus, does not consider the district director's findings. 20 C.F.R. §725.455(a). Therefore, an administrative law judge does not consider whether to modify a district director's decision. *Motichak v. BethEnergy Mines, Inc.*, 17 BLR 1-14, 1-18-19 (1992).

[9] The above approach is consistent with the allocation of the burden of proof. Generally, claimant has the burden of proof to establish each element of entitlement, unless aided by a presumption. *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81, 18 BLR 2A-1, 2A-6-9 (1994). On modification, however, the proponent of the modification order—which could be an employer seeking to overturn an award—has the burden of proof to establish a change in conditions or a mistake in a determination of fact. *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 139 (1997); *Branham v. BethEnergy Mines*, 20 BLR 1-27, 1-34 (1996). The question of who has the burden of proof, and on what issues, is clearer when there first is a decision in the case before the fact-finder is asked to reconsider the case. *See* 20 C.F.R. §725.310(a). Moreover, putting the modification proceeding first introduces confusion by suggesting that findings and credibility determinations that were either affirmed, or which were not disturbed by the Board in its previous decision remanding the case, have finality when, in fact, the administrative law judge, on remand, remains free to reconsider the weight to be accorded to the evidence. *See Lane v. Union Carbide Corp.*, 105 F.2d 166, 174, 21 BLR 2-34, 2-48 (4th Cir. 1997); *Dale v. Wilder Coal Co.*, 8 BLR 1-119, 1-120 (1985).

a supplemental medical report from Dr. Celko and a deposition of Dr. Rasmussen, submitted by claimant, and supplemental medical reports from Drs. Fino and Renn, submitted by employer. The administrative law judge explained that he admitted and considered those exhibits in connection with the Board's instruction that Judge Lesniak, on remand, should consider whether the case was affected by a recent amendment to the Act that reinstated the Section 411(c)(4) rebuttable presumption of total disability due to pneumoconiosis and, if so, to permit the parties to submit additional evidence to address the change in law. *Morgan v. Consolidation Coal Co.*, BRB No. 09-0739 BLA, slip op. at 11 (July 30, 2010) (unpub.). However, as the administrative law judge found, the additional evidence developed and submitted by the parties for purposes of the application of Section 411(c)(4), is irrelevant to consideration of the case on remand because claimant has not alleged any more than 13.33 years of coal mine employment and thus, cannot establish the fifteen years of qualifying coal mine employment needed to invoke the Section 411(c)(4) presumption. Decision and Order on Remand at 7. The administrative law judge nevertheless considered that evidence, and ultimately relied upon Dr. Celko's opinion, as supplemented, to award benefits. Decision and Order on Remand at 15, 18. The administrative law judge's decision was therefore erroneous.

Because the administrative law judge considered evidence that was not properly of record, I would vacate the administrative law judge's Decision and Order on Remand, and instruct him to reconsider whether claimant has carried his burden to establish the existence of pneumoconiosis and that his total disability is due to pneumoconiosis. However, the administrative law judge should first issue an order in which he clarifies the record by informing the parties of his evidentiary rulings,[10] and provides the parties with the opportunity to make any necessary "good cause" arguments for exceeding the evidentiary limitations of 20 C.F.R. §725.414. *L.P.* [*Preston*] *v. Amherst Coal Co.*, 24 BLR 1-57, 1-63 (2008) (en banc). Until the administrative law judge issues a Decision and Order on Remand that either awards or denies benefits on the claim, any further proceedings, whether modification or appeal, would not be in order.

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JUDITH S. BOGGS
Administrative Appeals Judge

[10] At the April 9, 2013 modification hearing, when the parties objected to each other's evidence on the grounds that the submissions exceeded the evidentiary limitations of 20 C.F.R. §725.414, the administrative law judge explained that he could not issue definitive evidentiary rulings until he went through the exhibits submitted and compared them to the parties' available evidentiary slots. Hr'g Tr. at 9, 11, 14.