

## PART V

### BENEFITS REVIEW BOARD POLICIES AND PROCEDURES

#### B. POLICIES AND PROCEDURES

##### 1. DISMISSAL

The administrative law judge's rule on dismissal provides in pertinent part that the administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim if claimant or his or her representative fail to attend a hearing without good cause. 20 C.F.R. §725.465(a)(1). The Board's rule on dismissal is similar in that it allows the Board to control its docket via dismissal if a party fails to pursue its claim. 20 C.F.R. §802.402(a). The Board may not, however, dismiss an appeal for abandonment on the death of a party unless the record affirmatively shows that there is no person who wishes to continue the action and whose rights may be prejudiced by dismissal. 20 C.F.R. §802.402(b).

#### CASE LISTINGS

[Third Circuit held that claimant 's failure to provide timely Petition for Review or excuse for delay were insufficient reasons to sustain Board's dismissal as there was no demonstrated intent to abandon appeal] ***Kephart v. Director, OWCP***, 701 F.2d 22, 5 BLR 2-58 (3d Cir. 1983).

[Sixth Circuit held Board did not abuse discretion in dismissing Petition for Review based on employer's failure to file brief or respond to Show Cause Order; review by district director and administrative law judge preserved "day in court"] ***Consolidation Coal Co. v. Gooding***, 703 F.2d 230, 5 BLR 2-66 (6th Cir. 1983).

[appeal can not be dismissed under Section 802.402(b) on death of party if record indicates that interested person may exist] ***Grayson v. North American Coal Corp.***, 6 BLR 1-851, 1-853 n.1 (1984).

[dismissal of claim with prejudice abuse of discretion where although claimant and her attorney failed to attend hearing, she intended to actively pursue her claim; Board held sanctions too severe] ***Howell v. Director, OWCP***, 7 BLR 1-259 (1984).

[there was no abuse of discretion in dismissal of case where parties failed to respond to

Order to Show Cause for want of prosecution] **Clevinger v. Regina Fuel Co.**, 8 BLR 1-1 (1985).

[when timely motion for reconsideration is filed with trier-of-fact, any appeal to Board, whether prior to or subsequent to the filing of the motion for reconsideration, shall be dismissed as premature] **McCluskey v. Zeigler Coal Co.**, 8 BLR 1-331 (1985)[reaffirming holding in **Whitfield**, 7 BLR 1-626 (1984).

### **DIGESTS**

Where the district director has issued a supplementary order of default assessing a twenty percent penalty pursuant to Section 14(f) of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. §914(f), and, where no factual issues have been raised by the parties nor did employer pay the penalty assessed, the Department of Labor had no jurisdiction to adjudicate questions regarding the supplementary order of default pursuant to Section 18(a) of the LHWCA, 33 U.S.C. §918(a), which was a final order when issued. The Board will dismiss appeals filed in such cases. See 20 C.F.R. §725.605(b). Furthermore, pursuant to Section 18(a) of the LHWCA, supplementary orders of default for additional compensation issued by a district director are subject to enforcement by the federal district courts, see **Providence Washington Insurance Co. v. Director, OWCP, [Kain]**, 765 F.2d 1381, 17 BRBS 135 (CRT)(9th Cir. 1985); **Tidelands Marine Service v. Patterson**, 719 F.2d 126, 16 BRBS 10 (CRT)(5th Cir. 1983), *rev'q* 15 BRBS 65 (1981). **Bertinotti v. Mathies Coal Co.**, 16 BLR 1-16 (1991).

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