

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 15, 2012

Elisabeth A. Shumaker
Clerk of Court

TAMMIE LABOR, o/b/o the Estate of
Hardy R. Labor,

Petitioner,

v.

SUN VALLEY COAL COMPANY; OLD
REPUBLIC INSURANCE COMPANY,

Respondents,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF
LABOR,

Party-in-Interest.

No. 12-9553
(BRB No. 11-0635 BLA)

ORDER

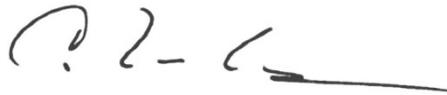
Before **BRISCOE**, Chief Judge, **KELLY**, and **TYMKOVICH**, Circuit Judges.

The petitioner, Ms. Labor, has filed this petition for review of a decision by the Benefits Review Board (the BRB) in a Black Lung Benefits case. The BRB's decision, in part, remanded the matter to the Administrative Law Judge for further proceedings. The respondents have filed a motion to dismiss, arguing that the BRB's decision is not final and appealable. Ms. Labor has not filed a response.

Under 33 U.S. C. § 921 (c) (made applicable to Black Lung cases by 30 U.S. C. § 932 (a)) the courts of appeals have jurisdiction to review “final” orders of the BRB. As a general rule, a remand to an administrative agency is not considered a final order, *Baca-Prieto v. Guigni*, 95 F. 3d 1006, 1008 (10th Cir. 1996), and courts have generally recognized that BRB remand orders are not final and appealable. *See e.g. Bratzah Corp. v. Director, Office of Workers’ Compensation Programs*, 1991 WL 213444 (10th Cir. 1991) (unpublished) (dismissing appeal from Black Lung Benefits Review Board order remanding the case to an Administrative Law Judge) and *Eggers v. Clinchfield Coal Co.*, 11 F. 3d 35 (4th Cir. 1993) (BRB order remanding miner’s claim to the ALJ for a decision on the merits was not final and appealable). No exception to the finality rule appears applicable here.

Accordingly, the respondents’ motion to dismiss is granted and this petition for review is DISMISSED. When the BRB issues a final, appealable decision, Ms. Labor may file a new petition for review if she wishes.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Christine Van Coney
Counsel to the Clerk