

BRB No. 05-0355 BLA

EDMOND FERGUSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 01/24/2006
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Timothy F. Cogan (Cassidy Myers Cogan & Voegelin LC), Wheeling, West Virginia, for claimant.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; 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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2004-BLA-5021) denying benefits of Administrative Law Judge Daniel J. Roketenetz on a subsequent 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). The administrative law judge credited claimant with at least ten years of qualifying coal mine employment, as stipulated by the parties and supported by the record, and adjudicated this claim, filed on July 9, 2001, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge determined that the case involved claimant's request for modification of the district director's denial of this subsequent claim, and that the previous claim had been denied on

the ground that claimant failed to establish total respiratory disability.¹ As the Director, Office of Workers' Compensation Programs (the Director), did not contest the issue of total disability in the present claim, the administrative law judge found that one of the applicable conditions of entitlement had changed since the prior denial pursuant to 20 C.F.R. §725.309(d). The administrative law judge determined that since pneumoconiosis had previously been established, the only issue remaining for adjudication was disability causation, and after weighing all of the evidence of record together, the administrative law judge found that claimant had failed to establish this element of entitlement pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's weighing of the medical opinions of record in finding that disability causation was not established under Section 718.204(c). The Director responds, agreeing with claimant's argument that the administrative law judge failed to provide valid reasons for finding the opinions of Drs. Chaban and Lenkey insufficient to establish disability causation at Section 718.204(c). The Director further contends that the administrative law judge erred in not adjudicating the contested issue of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). In response to the Board's Order issued on December 7, 2005, the Director has also filed a supplemental brief, urging the Board to remand this case to the district director for further evidentiary development in order to satisfy the Director's statutory duty pursuant to 30 U.S.C. §923(b).

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, we agree with the Director's contention that, once claimant demonstrated that one of the applicable conditions of entitlement had changed since the prior denial, the finding that pneumoconiosis was established in the previous claim is not binding in the current, subsequent claim. Director's Brief at 15; *see* 20 C.F.R. §725.309(d)(4); *Sellards v. Director, OWCP*, 17 BLR 1-77 (1993). As the Director listed pneumoconiosis as a contested issue, *see* Director's Exhibit 30, and both parties submitted evidence relevant to the issue, the administrative law judge was required to adjudicate the issue of the existence of pneumoconiosis before reaching the issue of disability causation. We also agree with the arguments of claimant and the Director that the administrative law judge provided an invalid reason for finding the opinions of Drs.

¹ The full procedural history of this case is set forth in the administrative law judge's Decision and Order at 3-5.

Chaban and Lenkey insufficient to establish disability causation, *i.e.*, the physicians failed to characterize claimant's pulmonary impairment as totally disabling, *see* Decision and Order at 9, 11. Because the Director conceded that claimant's respiratory impairment was totally disabling, the administrative law judge was obligated to determine only whether the weight of the conflicting medical opinions of record was sufficient to establish that pneumoconiosis was a substantially contributing cause of that impairment.² 20 C.F.R. §718.204(c)(1), (2); *see also* *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-373 (4th Cir. 2002); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).³ Consequently, we vacate the administrative law judge's findings pursuant to Section 718.204(c).

Lastly, the Director requests that this case be remanded to the district director for additional medical development, specifically to obtain a supplemental report from Dr. Ryckman, as the Director agrees with claimant's argument that he failed to meet his statutory obligation to provide claimant with a complete pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim. *See* 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990)(*en banc*); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990). Because Dr. Ryckman failed to definitively address the cause of claimant's pulmonary disease and impairment, the Director concedes that Dr. Ryckman's opinion does not fulfill the requirements for a complete and credible pulmonary evaluation. Consequently, we vacate the administrative law judge's denial of benefits pursuant to the

² Contrary to claimant's arguments, the administrative law judge is not empowered to infer disability causation from his review of claimant's history, symptoms, physical examination findings, objective test results, and the restrictive, irreversible and progressive nature of claimant's impairment. Claimant's Brief at 11-12, 15-20. The interpretation of medical data is for the medical experts, and it is error for an administrative law judge to substitute his conclusions for those of a qualified physician. *See generally* *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986); *Bogan v. Consolidation Coal Co.*, 6 BLR 1-1000 (1984). Further, the administrative law judge is not required to accept the opinion of a treating physician if he finds that the physician's conclusions are not well reasoned. Claimant's Brief at 6-7; *see* 20 C.F.R. §718.104(d)(5); *Nat'l Mining Ass'n v. U.S. Dep't of Labor*, 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002).

³ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant was last employed in the coal mining industry in the State of West Virginia. *See* *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 1.

Director's request, and remand this case to the district director for further development of the evidence.

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is vacated, and this case is remanded to the district director for further evidentiary development consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge