

BRB No. 97-0907 BLA

BETTY FANNIN)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	Date Issued:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Betty Fannin, Isonville, Kentucky, *pro se*.

Jeffrey S. Goldberg (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (96-BLA-1652) of Administrative Law Judge Thomas F. Phalen, Jr., on a 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 found that claimant established three years of coal mine employment. Claimant filed her first claim on October 28, 1991, which was denied in April 1992. Director's Exhibit 16. Claimant filed a second claim on June 24, 1993, which was denied on March 2, 1994. Director's Exhibit 17. She filed her third claim on November 12, 1995. Director's Exhibit 1. The administrative law judge ultimately determined that claimant failed to establish each of the elements of entitlement at 20 C.F.R. Part 718. Accordingly, benefits were denied. Claimant appeals, generally contending that the administrative law judge erred in failing to award benefits. The Director, Office of Workers' Compensation Programs (the Director),

filed a “Motion to Remand to District Director for Pulmonary Examination.”

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge’s Decision and Order if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent 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).

The Director contends that the Department of Labor has not provided claimant with a complete pulmonary evaluation, on her most recent claim. See 30 U.S.C. §932(b); 20 C.F.R. §718.101; *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990)(*en banc*). We therefore grant the Director’s motion and remand this case for a complete pulmonary evaluation.

Accordingly, the administrative law judge’s Decision and Order - Denial of Benefits is vacated and the case is remanded to the district director to allow for a complete pulmonary evaluation, at no expense to claimant, and for reconsideration of the merits of this claim in light of the new evidence.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge