

BRB No. 88-0428 BLA

MADGE HUFFMAN)
(Widow of GEORGE HUFFMAN))
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of John Bedford, Administrative Law Judge,
United States Department of Labor.

Vernon M. Williams (Wolfe & Farmer), Norton, Virginia, for claimant.

Elizabeth J. Shapiro (Robert P. Davis, Solicitor of Labor; 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, the United States Department of Labor.

Before: DOLDER and McGRANERY, Administrative Appeals Judges, and
NEUSNER, Administrative Law Judge.*

PER CURIAM:

Claimant, the surviving spouse, appeals the Decision and Order (84-BLA-
3842) of Administrative Law Judge John Bedford denying benefits on a miner's and

a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

Act of 1969, as amended, 30 U.S.C. §901 et seq. (the Act). The administrative law judge credited the miner with seven and one-quarter years of qualifying coal mine employment and reviewed his claim pursuant to the regulations at 20 C.F.R. Part 410, Subpart D. The administrative law judge found that the pulmonary function study and blood gas study evidence established the existence of a totally disabling respiratory or pulmonary impairment under 20 C.F.R. §§410.424 and 410.426, but that claimant had failed to establish that the impairment arose out of coal mine employment under 20 C.F.R. §410.416(b). Accordingly, benefits were denied on the miner's claim. The administrative law judge then reviewed the survivor's claim pursuant to the regulations at 20 C.F.R. Part 718, but found that claimant had failed to establish death due to pneumoconiosis under 20 C.F.R. §718.205(c)(2), and thus denied benefits. Claimant appeals, arguing that the administrative law judge erred in calculating the length of the miner's coal mine employment, andd contending that the evidence establishes entitlement to benefits under 20 C.F.R. Part 718, 20 C.F.R. Part 410, Subpart D, and 20 C.F.R. §410.490 on the miner's claim. Claimant further

contends that the administrative law judge's findings under 20 C.F.R. §718.205(c)(2) do not comport with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d), 30 U.S.C. §932(a). The Director, Office of Workers' Compensation Programs (the Director), responds, contending that the Department of Labor failed to provide the miner with a complete pulmonary examination pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b), and urging a remand for the deputy commissioner to obtain a supplemental medical opinion.¹ The Director also challenges the administrative law judge's findings with regard to length of coal mine employment.²

¹ The Director has filed a Motion to Remand in this case. The Board accepts the Director's Motion to Remand as his response brief, and herein decides this case on its merits.

² The administrative law judge's findings under 20 C.F.R. §410.414(a), *i.e.* that the x-ray evidence was insufficient to establish the existence of pneumoconiosis and that there is no autopsy or biopsy evidence of record, and his findings under §§410.424 and 410.426 are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

Claimant and the Director first contend that the administrative law judge failed to comply with the terms of the APA in calculating the length of the miner's coal mine employment. We agree. The administrative law judge found the Social Security Administration (SSA) records to be the most reliable evidence, and credited the miner with seven and one-fourth years of coal mine employment between 1948 and 1960, without specifying which quarters represented qualifying coal mine employment. Decision and Order at 3. The Director argues that the administrative law judge failed to address the widow's testimony and failed to explain why he discredited evidence that was both uncontradicted and consistent with the SSA records, e.g. evidence of coal mine employment with B.H. Crizer, Walton Sudduth Co., Inc., Gentry Construction Co., Inc., and Tri-State Steel Corporation. Inasmuch as the administrative law judge did not address all of the relevant evidence on this issue, nor indicate the specific quarters he credited as qualifying coal mine employment and provide his rationale for discrediting the remaining quarters, we vacate the administrative law judge's findings with regard to length of coal mine employment and remand this case for the administrative law judge to reconsider the

evidence of record thereon, and to consider this claim under the regulations at 20 C.F.R. Part 727 if appropriate.

The Director next contends that the Department of Labor failed to fulfill its statutory obligation under Section 413(b) to give the miner a complete pulmonary examination addressing each element of entitlement. See Pettry v. Director, OWCP, 14 BLR 1-98 (1990). The Director notes that Dr. Paranthaman examined the miner for the Department of Labor, but failed to indicate the extent to which coal mine employment contributed to the miner's condition. As Dr. Paranthaman did not address the essential elements of etiology and causation, his opinion did not discharge the Director's duty to provide a complete pulmonary examination. See Director's Exhibit 17; Pettry, supra. Consequently, we vacate the administrative law judge's findings under Section 410.416(b) on the miner's claim, and his findings under Section 718.205(c)(2) on the survivor's claim. Inasmuch as the miner is deceased and cannot submit to another pulmonary examination, we remand this case for the deputy commissioner to obtain a supplemental report addressing every element of entitlement and indicating whether the miner's death was due to pneumoconiosis.³ The administrative law judge must then weigh the supplemental report with the other relevant probative evidence of record in determining whether

³ If possible, such a supplemental report should be obtained from Dr. Paranthaman. Alternatively, another physician could review the medical evidence of record and submit a consultative report.

claimant has established entitlement on the miner's claim under 20 C.F.R. Part 727, 20 C.F.R. Part 410, Subpart D, and 20 C.F.R. §410.490, see Pittston Coal Group v. Sebben, 109 S.Ct. 414, 12 BLR 2-89 (1988); see also Taylor v. Clinchfield Coal Co., 895 F.2d 178, 13 BLR 2-294 (4th Cir. 1990), reh'g denied (1990); and entitlement on the survivor's claim under 20 C.F.R. Part 718.⁴

⁴ We note that if on remand the administrative law judge determines that entitlement has been established on the miner's claim, claimant will be derivatively entitled to benefits. See 20 C.F.R. §725.212; Pothering v. Parkson Coal Co., 861 F.2d 1321, 12 BLR 2-60 (3d Cir. 1988).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part, vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

FREDERICK D. NEUSNER
Administrative Law Judge