

BRB No. 04-0430 BLA

GEORGE B. HOSKINS )  
 )  
 Claimant-Petitioner )  
 )  
 v. ) DATE ISSUED:  
 04/30/2004 )  
 )  
 LEWIS & LEWIS COAL COMPANY )  
 )  
 and )  
 )  
 KENTUCKY CENTRAL INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden., Kentucky, for claimant.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (03-BLA-5515) of Administrative Law Judge Rudolf L. Jansen 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).<sup>1</sup> Claimant filed his claim for benefits on February 5, 2001. After crediting claimant with 9.77 years of coal mine employment, the administrative law judge dismissed Lewis & Lewis Coal Company as a potential responsible operator upon determining that claimant did not work for employer for at least one year. Finding further that there was no other employer that meets the requirements to be held liable as a responsible operator, the administrative law judge found that liability for any benefits in this case must be assumed by the Black Lung Disability Trust Fund. Turning to the merits of the claim, the administrative law judge considered entitlement pursuant to the applicable regulations at 20 C.F.R. Part 718. The administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, he denied benefits. On appeal, claimant contends that the administrative law judge improperly denied benefits, challenging the administrative law judge's findings under Sections 718.202(a)(1), (a)(4) and 718.204(b)(2)(iv). The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand for Complete Pulmonary Evaluation.

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

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<sup>1</sup>The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

The Department of Labor is required by statute, regulation and case law to provide claimant with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate a claim. *See* 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.405(b); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990).

In view of the concession of the Director that Dr. Hussain's opinion does not satisfy the Department of Labor's statutorily imposed duty, we vacate the administrative law judge's findings on the merits of entitlement in his Decision and Order.<sup>2</sup> We remand the case to the district director to secure a medical report of a complete, credible pulmonary examination provided by the Department of Labor.

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<sup>2</sup>The administrative law judge discounted Dr. Hussain's opinion as poorly documented and reasoned because Dr. Hussain provided no basis for his opinion that claimant has pneumoconiosis, and did not indicate an awareness of the exertional requirements of claimant's usual coal mine employment. Decision and Order at 11, 13; Director's Exhibit 16.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is vacated, and the case is remanded to the district director for further proceedings consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge