

BRB No. 06-0530 BLA

CARREL ADAMS)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 04/30/2007
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

D. Mitchell Bryant, Cleveland, Tennessee, for claimant.

Helen H. Cox (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, 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:

Claimant¹ appeals the Decision and Order (04-BLA-5662) of Administrative Law Judge Linda S. Chapman denying benefits 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).² The administrative law judge credited claimant with eight

¹ A Department of Labor claims examiner provided the Office of Adjudicatory Services with a copy of a death certificate, which indicates that claimant died on September 9, 2006.

² Claimant filed his first claim on June 22, 1983. Director's Exhibit 1. On December

years and five months of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the newly submitted evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). Consequently, the administrative law judge found the newly submitted evidence sufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. However, on the merits, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the evidence is sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). The Director, Office of Workers' Compensation Programs (the Director), responds by Motion to Remand, contending that he has failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation, and urging the Board to remand the case for him to remedy the defects in Dr. Kelly's report.

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. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In a Motion to Remand, the Director argues that he has not satisfied his obligation under 30 U.S.C. §923(b), on the basis that the record is devoid of an opinion from him on the determinative issues of pneumoconiosis and total disability due to pneumoconiosis. Director's Motion to Remand at 1, 5. The Director also states that "the Department's duty would be fulfilled if, once Dr. Kelly is informed that the weight of the x-ray evidence is negative for clinical pneumoconiosis, [Dr. Kelly] submits a fully explained supplemental opinion addressing his reasons, with reference to any relevant examination results or testing, for diagnosing COPD and attributing the cause of that COPD to both smoking and dust exposure." *Id.* at 6. Further, the Director states that "Dr. Kelly should also be asked to

15, 1983, the district director issued an Order, requiring claimant to show cause, within thirty days, why his claim should not be denied by reason of abandonment. *Id.* Because claimant did not pursue this claim any further, the denial became final. Claimant filed his second claim on March 27, 1992. *Id.* On September 19, 1994, Administrative Law Judge Thomas M. Burke issued a Decision and Order denying benefits, based on claimant's failure to establish total disability. *Id.* The Board affirmed Judge Burke's denial of benefits. *Adams v. Valley Dev. Mining Co.*, BRB No. 95-0106 BLA (Aug. 22, 1995)(unpub.). The denial became final because claimant did not pursue this claim any further. Claimant filed his most recent claim on July 1, 2003. Director's Exhibit 3.

address the cause of claimant's disabling respiratory impairment, particularly whether any diagnosed pneumoconiosis is a substantially contributing cause of [claimant's] disabling impairment, and to fully explain the basis for his etiology conclusion."³ *Id.*

The administrative law judge rejected Dr. Kelly's diagnosis of legal pneumoconiosis because she found that it is not reasoned or supported by the objective medical evidence. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge specifically stated:

In addition to diagnosing pneumoconiosis, Dr. Kelly also concluded that the [c]laimant has chronic obstructive pulmonary disease, due to a combination of his coal dust exposure and cigarette smoking. Dr. Kelly did not provide any rationale or basis for this conclusion, or explain how the results of the objective testing supported this conclusion. I find that this opinion is not well reasoned or supported by the objective medical evidence, and is not sufficient to support a finding that the [c]laimant has legal pneumoconiosis.

Decision and Order at 11.

As required by Section 413(b) of the Act, 30 U.S.C. §923(b), the Director has a statutory obligation to provide a complete pulmonary evaluation of the miner. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-89-90 (1994). Because the Director concedes that he has not satisfied his statutory obligation, we remand this case to the district director as requested by the Director. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.401, 725.405(b); *see Cline v. Director, OWCP*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Hodges*, 18 BLR at 1-89-90; *Petry v. Director, OWCP*; 14 BLR 1-98 (1990). Consequently, we vacate the administrative law judge's denial of benefits.⁴

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated and the case is remanded to the district director for reconsideration of the merits of this claim in light of our Decision and Order and all the evidence of record.

³ The Director's Motion to Remand was filed before claimant died and while claimant's appeal was pending.

⁴ In view of our disposition of this case, we decline to address claimant's contentions in this appeal. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-89-90 (1994).

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge