

BRB No. 98-1457 BLA

EDWARD S. PETROSKI, SR.)
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 8/10/99
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT OF)
 LABOR)
)
 Respondent) DECISION AND ORDER

Appeal of the Decision and Order of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for claimant.

Barry H. Joyner (Henry L. Solano, 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, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-0847) of Administrative Law Judge Vivian Schreter-Murray 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 relevant procedural history of this case is as follows: Claimant filed his initial application for benefits on June 22, 1981. Director's Exhibit 25. The district director denied this claim on December 16, 1981. *Id.* Claimant took no further action on this claim. Claimant filed a second claim on August 6, 1987. Director's Exhibit 26. In a Decision and Order issued on March 7, 1989, Administrative Law Judge Thomas W. Murrett denied benefits on the ground that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). *Id.* The Board affirmed the

denial of benefits in a Decision and Order dated March 18, 1993. *Petroski v. Director, OWCP*, BRB No. 89-1321 BLA (Mar. 18, 1993)(unpub.).

Claimant filed a third application for benefits on January 16, 1996. Director's Exhibit 1. Following the district director's finding that claimant is not entitled to benefits, the case was transferred to the Office of Administrative Law Judges for a hearing. In her Decision and Order, Administrative Law Judge Vivian Schreter-Murray (the administrative law judge) credited claimant with seven years of coal mine employment and noted the presence in the record of three applications for benefits. The administrative law judge discussed the newly submitted evidence and the previously considered evidence and determined that claimant did not prove that he has pneumoconiosis or that he is totally disabled due to pneumoconiosis. Accordingly, benefits were denied. Claimant argues on appeal that the present case must be remanded to the district director so that he can be provided with a complete and credible pulmonary evaluation, inasmuch as the administrative law judge discredited the sole pulmonary evaluation submitted in conjunction with claimant's most recent application for benefits. The Director, Office of Workers' Compensation Programs (the Director), has responded in a Motion to Remand for Complete Pulmonary Evaluation and concurs with claimant's assertion.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After claimant filed his third claim, he was examined by Dr. Prakash at the request of the Department of Labor. Dr. Prakash performed a physical examination on February 23, 1996 and recorded a coal mine employment history of seventeen years. Director's Exhibit 9. Dr. Prakash obtained a chest x-ray, a pulmonary function study, a blood gas study, and an electrocardiogram. Director's Exhibits 7, 9, 10. The pulmonary function study produced qualifying values, but was found to be invalid due to less than optimal effort as exhibited by a greater than 5% variation between the tracings. Director's Exhibits 7, 8. The blood gas study produced values in excess of those set forth in Appendix B to 20 C.F.R. Part 718 and was, therefore, nonqualifying.¹ Director's Exhibit

¹A "qualifying" pulmonary function study or blood gas study is one that produces values equal to or less than the values set forth in the tables appearing in Appendix B and Appendix C to 20 C.F.R. Part 718. A "nonqualifying" study is one that produces values in excess of the table values.

10. The x-ray interpretation indicated that claimant's lungs exhibited extensive pleuropulmonary changes. Director's Exhibit 9.

Based upon the results of his examination of claimant, Dr. Prakash diagnosed chronic obstructive lung disease, chronic respiratory acidosis, coronary artery disease, arthritis, and pleuropulmonary fibrosis. *Id.* The doctor further stated that claimant is suffering from a severe impairment that is totally disabling and that claimant's chronic obstructive pulmonary disease and fibrosis, which are attributable to smoking and coal dust exposure, are contributing causes of the impairment. *Id.* Dr. Prakash also indicated, however, that he could not quantify the extent to which claimant's obstructive disease and fibrosis contributed to his disability. *Id.* He also identified asbestos exposure as a possible cause of claimant's pleuropulmonary fibrosis. *Id.* The administrative law judge discredited Dr. Prakash's opinion on the ground that the doctor based his conclusions, in part, upon an invalid objective study and an inaccurate coal mine employment history. Decision and Order at 4. The administrative law judge also found Dr. Prakash's opinion entitled to little weight, as it is uncertain and speculative. *Id.*

Neither claimant nor the Director has raised any allegations of error regarding the administrative law judge's weighing of either Dr. Prakash's opinion or the other medical evidence of record. Both parties maintain, however, that in light of the administrative law judge's decision to discredit Dr. Prakash's opinion, there is no credible medical opinion in the present claim addressing the elements of entitlement. Claimant and the Director assert, therefore, that the Director has not satisfied his statutory obligation to provide claimant with a complete pulmonary evaluation. See 30 U.S.C. §923(b), 20 C.F.R. §§718.101, 718.401, 718.405(b). Thus, both parties contend that the Decision and Order denying benefits must be vacated and the case remanded in order to allow the Director to provide claimant with a complete and credible pulmonary evaluation. In view of the fact that the Director and claimant agree that remand is required in the present case, we grant the Director's motion and, therefore, vacate the administrative law judge's findings pursuant to 20 C.F.R. §§718.202 (a)(1)-(4) and 718.204(c)(1)-(4), and remand the case to the district director. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); see *Cline v. Director, OWCP*, 917 F.2d 9, 14 BLR 2-102 (8th Cir. 1990); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990)(*en banc*); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990)(*en banc*).

Accordingly, the administrative law judge's Decision and Order is vacated and the case is remanded to the district director for further development of the evidence.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge