

BRB No. 06-0258 BLA

CHRIS BARTLEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CHEYENNE ELKHORN COAL)	DATE ISSUED: 02/28/2006
)	
Employer-Respondent)	
)	
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 Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Chris Bartley, Lookout, Kentucky, *pro se*.

Timothy J. Walker (Ferreri & Fogle), Lexington, Kentucky, for employer.

Barry J. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order Denying Benefits (04-BLA-6231) of Administrative Law Judge Linda S. Chapman on a

¹ Ms. Kelly Fidell, a benefits counselor of the Kentucky Black Lung Coalminers and Widows Association, requested on behalf of claimant that the Board review the

claim² 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 initially credited claimant with fourteen and one-half years of qualifying coal mine employment. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b) and a respiratory impairment due to pneumoconiosis, but that claimant failed to establish that he is totally disabled by his respiratory impairment pursuant to 20 C.F.R. §718.204(b) by a preponderance of the evidence. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. In response, employer urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a Motion to Remand stating that he has failed to provide claimant with a complete and credible pulmonary examination as required by Section 413(b) of the Act, 30 U.S.C. §923(b), and, for that reason, he requests that the case be remanded to the district director.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 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 rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Director contends that Dr. Baker, a physician who conducted claimant's pulmonary evaluation at the behest of the Director, diagnosed a mild impairment but, as

administrative law judge's decision, but is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

² Claimant, Chris Bartley, filed and signed an application for benefits on April 7, 2003. This application was received in the district director's office located in Pikeville, Kentucky on April 10, 2003. However, a notation at the top of the application states "Reconstructed" with the April 10, 2003 date stamp crossed out and the date of January 10, 2003 handwritten on the application. Director's Exhibit 2. Either the January 2003 or April 2003 filing date renders this a claim filed under the amended regulations implementing the Federal Coal Mine Health and Safety Act of 1969, which became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002).

the administrative law judge found, failed to address whether this impairment would preclude claimant from performing his usual coal mine work, and hence, the administrative law judge was unable to assess the probative value of Dr. Baker's opinion with regards to the total disability issue. Because the pulmonary examination failed to address the issue of whether claimant was totally disabled, which is a critical defect since this issue served as the basis for the denial of benefits, the Director contends that he failed to satisfy his burden of providing claimant with a complete, pulmonary examination pursuant to §413(b) of the Act.³

It is well established that the Department of Labor has a statutory duty to provide claimant with a complete pulmonary evaluation sufficient to substantiate his claim. 30 U.S.C. §923(b); *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990) (*en banc*); see *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); accord *Cline v. Director, OWCP*, 917 F.2d 9, 14 BLR 2-102 (8th Cir. 1990). Accordingly, we grant the Director's request that the case be remanded to the district director for further evidentiary development. See *Petry*, 14 BLR at 1-198; *Hall*, 14 BLR at 1-51. We, therefore, vacate the administrative law judge's determination that claimant failed to establish total respiratory disability pursuant to Section 718.204(b) and, consequently, remand the case to the district director for the Director to satisfy his obligation under Section 413(b) of the Act.

³ A review of the record reveals that Dr. Baker rendered a supplemental report on April 29, 2005 wherein he reviewed the findings from his initial examination of claimant conducted on April 18, 2003. Director's Exhibit 35. Although Dr. Baker's supplemental report was admitted into the evidence of record during the formal hearing, neither the administrative law judge in her Decision and Order nor the Director in his Motion to Remand addressed this evidence. See Hearing Transcript at 5-7.

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is vacated and this case is remanded to the district director for further evidentiary development consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge