

BRB No. 07-0434 BLA

R.C.)
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 Claimant-Petitioner)
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 v.)
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 CHAS COAL, LLC)
)
 and) DATE ISSUED: 02/29/2008
)
 ANESTHESIOLOGIST PROFESSIONAL)
 ASSURANCE)
 c/o EMPLOYERS RISK)
)
 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 and Decision and Order Denying Motion for Reconsideration of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Phyllis L. Robinson, Manchester, Kentucky, for claimant.

William E. Brown, II (Pohl, Kiser & Aubrey, P.S.C.), Lexington, Kentucky, for employer/carrier.

Barry H. Joyner (Gregory F. Jacob, 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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and Decision and Order Denying Motion for Reconsideration (04-BLA-6224) of Administrative Law Judge Paul H. Teitler (the administrative law judge) 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 administrative law judge accepted the parties' stipulation that claimant worked for twenty-five years in coal mine employment, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b). The administrative law judge also found that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. In a subsequent Decision and Order, the administrative law judge denied the request for reconsideration by the Director, Office of Workers' Compensation Programs (the Director).

On appeal, claimant contends that the administrative law judge erred in finding that the evidence did not establish total disability at 20 C.F.R. §718.204(b). The Director responds by Motion to Remand, contending that he has failed to fulfill his statutory obligation to provide claimant with a complete pulmonary evaluation, and urging the Board to remand the case to the district director for a complete pulmonary evaluation. Employer responds, urging the Board to deny the Director's Motion to Remand and affirm the denial of benefits.

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).

The Director states that he has failed to fulfill his statutory obligation to provide claimant with a complete pulmonary evaluation. In a Motion to Remand, the Director argues that he has not satisfied his obligation under Section 413(b), because the evaluation he provided did not include an opinion on the determinative issue of total disability. The Director specifically asserts that because Dr. Baker failed to address whether claimant's impairment would preclude him from performing his usual coal mine employment, an essential element of entitlement, the Director has failed to provide claimant with a complete pulmonary evaluation.

In a report dated May 20, 2003, Dr. Baker indicated that claimant has a moderate impairment. Director's Exhibit 9. In a subsequent report dated January 27, 2006, Dr. Baker

stated, “I feel his condition, as well as any impairment, would be caused by his coal dust exposure.” Claimant’s Exhibit 1.

In his December 5, 2006 Decision and Order, the administrative law judge found that the evidence did not establish total disability at Section 718.204(b)(2)(iv). The administrative law judge stated that “Dr. Baker . . . did not discuss the level of impairment [c]laimant’s pneumoconiosis has caused.” Decision and Order Denying Benefits at 9. The administrative law judge also stated that “[n]o physician has stated that [c]laimant is totally disabled due to pneumoconiosis.” *Id.* at 9. In his January 26, 2007 Decision and Order Denying Motion for Reconsideration, the administrative law judge determined that Dr. Baker’s opinion, that any impairment would be caused by coal dust exposure, was insufficient to establish total disability. Decision and Order Denying Motion for Reconsideration at 2. The administrative law judge explained that “[Dr. Baker’s opinion] does not provide an explanation of the level of disability, nor does it provide a rational [sic] for how that disability is related to the [c]laimant’s pneumoconiosis.” *Id.*

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.¹

¹ In light 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).

Accordingly, the administrative law judge's Decision and Order Denying Benefits and Decision and Order Denying Motion for Reconsideration are vacated, the Director's motion is granted, and the case is remanded to the district director for a complete pulmonary evaluation to be provided to claimant, and for reconsideration of his claim in light of the new evidence.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge