

BRB No. 07-0451 BLA

O.D., Surviving Spouse, on)
Behalf of H.D.)
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED: 02/29/2008
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of William S. Colwell,
Administrative Law Judge, United States Department of Labor.

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

Emily Goldberg-Kraft (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: Dolder, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-5934) of Administrative Law Judge William S. Colwell denying benefits on a miner's claim¹ 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 credited the miner with seven years of qualifying coal mine employment, and adjudicated this claim, filed on July 24, 2002, pursuant to the regulations at 20 C.F.R. Part 718. The administrative law judge determined that the Director, Office of Workers' Compensation Programs (the Director), did not contest the existence of pneumoconiosis, and that his

¹ Claimant is the miner's widow, and is pursuing the miner's claim on his behalf.

concession was supported by x-ray and medical opinion evidence at 20 C.F.R. §718.202(a)(1), (4). The administrative law judge thus found that the miner suffered from pneumoconiosis at the time of his death, and that the miner's pneumoconiosis arose from his coal mine employment pursuant to 20 C.F.R. §718.203(c). The administrative law judge further found that total respiratory disability had been established pursuant to 20 C.F.R. §718.204(b), but that the evidence was insufficient to establish disability causation pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant's sole contention is that the Director failed to provide the miner with a credible pulmonary evaluation sufficient to substantiate his claim. The Director responds, urging the Board to remand this case to the district director for further evidentiary development in order to satisfy the Director's statutory duty pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b), 20 C.F.R. §725.406(a).

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).

The Director requests that this case be remanded to the district director for additional medical development, specifically to obtain a supplemental report from Dr. Simpao, as the Director agrees with claimant's argument that he failed to meet his statutory obligation to provide the miner with a complete pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim. *See* 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.406; *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990)(*en banc*). Because the administrative law judge discredited Dr. Simpao's opinion at Section 718.204(c) on the grounds that the physician relied on an inflated coal mine employment history and failed to adequately address the role of the miner's history of smoking and heart problems or explain the basis for his conclusion that the miner's total disability was caused solely by coal dust exposure, the Director concedes that Dr. Simpao's opinion does not fulfill the requirements for a complete and credible pulmonary evaluation. We agree. Consequently, we vacate the administrative law judge's denial of benefits pursuant to the Director's request, and remand this case to the district director for further development of the evidence.²

² In response to the administrative law judge's findings, the Director asserts that Dr. Simpao must be informed that the miner was credited with only seven years of coal mine employment and instructed: to address all possible causes of the miner's pulmonary impairment; to state whether he believes coal workers' pneumoconiosis is a contributing cause of the miner's disability; and to explain his conclusion in detail. Director's Brief at 4, n. 4.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated, and this case is remanded to the district director for further evidentiary development consistent with this opinion, and for reconsideration of the merits of this claim in light of the new evidence.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge