

BRB No. 97-0840 BLA

PAT MULLINS)
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED:
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order [on Remand] of Edith Barnett, Administrative Law Judge, United States Department of Labor.

Pat Mullins, Pennington Gap, Virginia, *pro se*.¹

Jeffrey S. Goldberg (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor of Labor; 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: SMITH, BROWN, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

¹ Ron Carson, a benefits counselor with Stone Mountain Health Services in St. Charles, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

Claimant, without the assistance of counsel, appeals the Decision and Order [on Remand] (93-BLA-1849) of Administrative Law Judge Edith Barnett denying benefits 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.* This case involves claimant's request for modification, and is before the Board for a third time.² Most recently, the case was remanded to the administrative law judge for reconsideration of whether claimant established either a mistake in a determination of fact or a change in conditions pursuant to 20 C.F.R. §725.310. See *Mullins v. Director, OWCP*, BRB No. 95-0810 BLA (Sept. 26, 1995) (unpublished). The administrative law judge was further instructed to consider whether rebuttal of the interim presumption is established pursuant to 20 C.F.R. §727.203(b)(3). *Id.* On remand, the administrative law judge found that claimant failed to establish either a mistake in a determination of fact or a change in conditions. The administrative law judge noted that the Director, Office of Workers' Compensation Programs (the Director), conceded that rebuttal is precluded pursuant to 20 C.F.R. §727.203(b)(2). The administrative law judge, however, found the opinions of Drs. Paranthaman and Taylor to be sufficient to rule out the causal relationship between claimant's total disability and his coal mine employment pursuant to 20 C.F.R. §727.203(b)(3). Accordingly, the administrative law judge denied benefits. Claimant appeals, challenging the denial of benefits. The Director responds, urging the Board to vacate the denial of benefits and remand the case for further consideration at Section 727.203(b)(3).

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. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 consistent with applicable 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).

We are in agreement with the Director that the administrative law judge erred in his analysis of rebuttal pursuant to 20 C.F.R. §727.203(b)(3). In order to establish rebuttal under Section 727.203(b)(3), the party opposing entitlement must rule out the causal relationship between the miner's total disability and his coal mine employment. See *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994); *Bethlehem Mines Corp. v. Massey*, 736 F.2d 120, 7 BLR 2-72 (4th Cir. 1984). Contrary to the administrative law judge's finding, while Dr. Paranthaman opined that claimant is not totally disabled from

² We adopt the procedural history as set forth in our prior decisions. See *Mullins v. Director, OWCP*, BRB No. 95-0810 BLA (Sept. 26, 1995) (unpublished); *Mullins v. Westmoreland Coal Co.*, BRB No. 89-0523 BLA (Aug. 16, 1990) (unpublished).

performing heavy manual labor, his opinion is insufficient to establish Section 727.203(b)(3) rebuttal as the doctor specifically diagnosed that claimant has a mild respiratory impairment attributable to coal workers' pneumoconiosis. See *Grigg, supra*; Decision and Order (D&O) at 2-3; Director's Exhibit 87. Additionally, to the extent that Dr. Taylor diagnosed chronic obstructive pulmonary disease (COPD) secondary to coal mine employment, and he specifically opined that claimant "would be disabled from working in the mines due to his COPD," Claimant's Exhibit 2, the administrative law judge erred in concluding that Dr. Taylor's opinion is supportive of Section 727.203(b)(3) rebuttal. D&O at 3.

Furthermore, we hold that the administrative law judge erred by not addressing the weight accorded the medical opinions of Drs. Abernathy, Dahhan, Fino, Sobieski and Fleenor at 20 C.F.R. §727.203(b)(3). Because the administrative law judge did not discuss all of the relevant evidence, and did not provide a sufficient explanation for her findings of fact and conclusions of law, her decision fails to comply with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a). We, therefore, vacate the administrative law judge's finding that rebuttal is established pursuant to 20 C.F.R. §727.203(b)(3).

On remand, the administrative law judge must reconsider whether the record evidence, as a whole, is sufficient to establish rebuttal of the interim presumption pursuant to 20 C.F.R. §727.203(b)(3). If the administrative law judge denies benefits pursuant to 20 C.F.R. Part 727, the administrative law judge must then consider entitlement under 20 C.F.R. Part 410. See *Muncy v. Wolfe Creek Collieries Coal Co., Inc.*, 3 BLR 1-627 (1981).

Accordingly, the administrative law judge's Decision and Order [on Remand] denying benefits is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY

Administrative Appeals Judge