

BRB No. 98-1406 BLA

KERMIT R. BUCKLEN)	
)	
Claimant-Petitioner))
)	
v.)	
)	
JEWELL SMOKELESS COAL COMPANY)	
)	DATE ISSUED:
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 of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Kermit R. Bucklen, Raven, Virginia, *pro se*.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen, Chartered), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (95-BLA-2523) of Administrative Law Judge Stuart A. Levin denying modification and 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.* (the Act). In the original Decision and Order, Administrative Law Judge Robert L. Cox considered entitlement pursuant to 20 C.F.R. Part 718 and found that the evidence

of record was sufficient to establish entitlement.¹ Director's Exhibit 48. Employer appealed and the Board vacated the award of benefits and remanded the case for further consideration on January 29, 1990. Director's Exhibit 60. On remand, Judge Cox denied benefits as claimant failed to demonstrate that pneumoconiosis played any role in his pulmonary or respiratory impairment. Director's Exhibit 64. Claimant requested reconsideration which Judge Cox denied on August 12, 1991. Director's Exhibits 67, 70.

Claimant subsequently requested modification on November 18, 1991 and Administrative Law Judge Edward J. Murty, Jr. denied benefits on February 24, 1994. Director's Exhibits 71, 99. Claimant again requested modification and submitted additional medical evidence on July 4, 1994. Director's Exhibit 100. Administrative Law Judge Stuart A. Levin denied claimant's second modification request on September 11, 1996. Claimant appealed and the Board vacated the denial of modification and remand the case for further consideration of the evidence. *Bucklen v. Jewell Smokeless Coal Co.*, BRB No. 96-1750 BLA (August 27, 1997)(unpublished). On remand, the administrative law judge adopted the brief of the Director, Office of Workers' Compensation Programs (the Director) and incorporated it into his decision as his findings. Accordingly, benefits were denied. In the instant appeal, claimant asserts that the administrative law judge did not adjudicate the case pursuant to the Board's remand instructions and generally contends that he is entitled to benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director has filed a letter indicating that he will not participate in this appeal.

In an appeal filed by a claimant without the aid of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). If the findings of fact and conclusions of law of the administrative law judge 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the

¹Claimant filed his claim for benefits on November 10, 1980. Director's Exhibit 1.

pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In the instant Decision and Order, the administrative law judge stated that he had reviewed the record in its entirety and found the Director's proposed findings pursuant to *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993) fully supported by the record. Decision and Order at 2. The administrative law judge then incorporated the Director's brief and concluded that claimant failed to establish entitlement to benefits. Decision and Order at 2. The administrative law judge did not consider and evaluate the medical evidence and make findings of fact and conclusions of law therefrom, but merely adopted the Director's conclusions and analysis, contrary to the Administrative Procedure Act, (APA) 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 U.S.C. §932(a).² *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Hall v. Director, OWCP*, 12 BLR 1-80 (1988)(*en banc*); *Robertson v. Alabama By-Products Corp.*, 7 BLR 1-793 (1985). As a result, we vacate the administrative law judge's denial of modification and benefits and remand the case for complete consideration and evaluation of the medical evidence as instructed in our prior decision. The administrative law judge is further instructed to independently evaluate the evidence of record instead of adopting the Director's brief as his decision. The administrative law judge has deprived the parties of their rights by refusing to make independent findings. *Hall, supra*. We note that we would not have considered the administrative law judge to have abdicated his authority to analyze the evidence and apply correct law, if he had cited those portions of the Director's brief which he had adopted, or even included proposed findings, and cited to the record. *Hall, supra*. If a decision cannot withstand scrutiny on the four corners of the document, parties are compelled to rely on a document with which they may be unfamiliar, and which may not be easily accessible. Such a situation is not acceptable. *Hall, supra*. The result of an administrative determination must be a timely and understandable decision available to the parties, addressing relevant issues. That has not occurred in this case.

²The Administrative Procedure Act requires each adjudicatory decision to include a statement of "findings and conclusions, and the reasons or basis therefore, on all material issues of fact, law or discretion presented on the record...." 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).

In considering the evidence of record on remand, the administrative law judge must include in his Decision and Order sufficient analysis and findings of fact to indicate that he has weighed all the relevant evidence of record pursuant to the appropriate standards and the basis for his decision therein. *See Ridings v. C & C Coal Co., Inc.*, 6 BLR 1-227 (1983).

Accordingly, we vacate the Decision and Order of the administrative law judge denying benefits and again remand the case for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge