

BRB No. 05-0755 BLA

CHANDRA S. SHARMA)
)
 Claimant-Petitioner)
)
 v.)
)
 OLGA COAL COMPANY)
)
 and)
)
 WEST VIRGINIA CWP FUND) DATE ISSUED: 01/20/2006
)
 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 of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Chandra S. Sharma, Plano, Texas, *pro se*.

Robert Weinberger (West Virginia Coal-Workers’ Pneumoconiosis Fund), Charleston, West Virginia, for employer/carrier.

Jeffrey S. Goldberg (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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance the counsel, appeals the Decision and Order – Denying Benefits (03-BLA-5813) of Administrative Law Judge Patrick M. Rosenow on a 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 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, while claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b), claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge’s denial of benefits. In response, employer/carrier 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 limited response letter 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 the administrative law judge determined that the opinion of Dr. Sanchez, a physician who conducted claimant’s pulmonary evaluation on behalf of the Director, was entitled to no weight because it was equivocal and poorly reasoned, and that therefore, the Director failed to provide claimant with a complete, credible pulmonary examination as required by the Act sufficient to substantiate his claim. Consequently, the Director moves the Board to remand the case to the district director so that the Director can fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation by obtaining a supplemental, reasoned opinion from Dr. Sanchez.

¹ Claimant, Chandra S. Sharma, filed an application for benefits on October 9, 2002. Director’s Exhibit 2.

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 the purpose of obtaining a supplemental report from Dr. Sanchez. *See Petry*, 14 BLR at 1-198; *Hall*, 14 BLR at 1-51.

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

BETTY JEAN HALL
Administrative Appeals Judge