

BRB No. 98-0570 BLA

ROBERT D. ALRED, SR.	)	
	)	
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 of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Robert D. Alred, Sr., Middleburg, Florida, *pro se*.

J. Matthew McCracken (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; 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: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (97-BLA-1405) of Administrative Law Judge John C. Holmes 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.* (the Act). The instant case involves a duplicate claim filed on July 1, 1996.<sup>1</sup> After crediting claimant with approximately

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<sup>1</sup>The relevant procedural history of the instant case is as follows: Claimant initially filed a claim for benefits on June 18, 1980. Director's Exhibit 29. The district director denied the claim on January 21, 1981. *Id.* There is no evidence that

four to five years of coal mine employment, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand, urging the Board to remand the case to the district director in order to allow him to provide claimant with a complete pulmonary evaluation.<sup>2</sup>

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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 findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

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claimant took any further action in regard to his 1980 claim.

Claimant filed a second claim on February 12, 1993. Director's Exhibit 30. The district director denied the claim on August 6, 1993. *Id.* There is no evidence that claimant took any further action in regard to his 1993 claim.

Claimant filed a third claim on July 1, 1996. Director's Exhibit 1.

<sup>2</sup>Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding of approximately four to five years of coal mine employment.

We grant the Director's request to remand this case, given the Director's concession that the Department of Labor failed to provide the miner with a complete, credible pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required by the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); see *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990) (*en banc*). Consequently, we vacate the administrative law judge's denial of benefits.<sup>3</sup>

Accordingly, the administrative law judge's Decision and Order is affirmed in part and vacated in part, and the case is remanded to the district director to allow for a complete pulmonary evaluation, at no expense to claimant, and for reconsideration of the merits of this claim in light of our Decision and Order and all the evidence of record.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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<sup>3</sup>In the instant case, in order to establish a material change in conditions pursuant to 20 C.F.R. §725.309, the newly submitted evidence must support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or a finding of total disability pursuant to 20 C.F.R. §718.204(c). See *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994); Director's Exhibits 29, 30. On remand, after claimant is provided a complete, credible pulmonary evaluation, the trier of fact must initially determine whether the evidence is sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309. *Ross, supra*.

JAMES F. BROWN  
Administrative Appeals Judge