

BRB No. 89-1878 BLA

DANIEL HENRY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order and Order Denying Motion for Reconsideration of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis (Law Offices of Charles A. Bressi, Jr.), Pottsville, Pennsylvania, for claimant.

Richard A. Seid (Robert P. Davis, 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, the United States Department of Labor.

Before: SMITH and DOLDER, Administrative Appeals Judges, and CLARKE, Administrative Law Judge.\*

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order and Order Denying Motion for Reconsideration (87-

BLA-3546) of Administrative Law Judge Ralph A. Romano awarding benefits on a claim filed pursuant to the \*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

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 reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with at least twenty-five years of qualifying coal mine employment. The administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment under 20 C.F.R. §§718.202(a)(1) and 718.203(b), and total disability due to pneumoconiosis under 20 C.F.R. §718.204. Accordingly, benefits were awarded. The Director appeals, contending that the administrative law judge erred in failing to provide a sufficient rationale for finding that claimant's disability is due to pneumoconiosis under Section 718.204(b) and for denying the Director's Motion for Reconsideration. Claimant responds, urging affirmance.<sup>1</sup>

The Board's scope of review is defined by statute. If the administrative law

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<sup>1</sup> The administrative law judge's findings under Sections 718.202(a)(1), 718.203(b), and 718.204(c), and with regard to length of coal mine employment are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

judge's findings of fact and conclusions of law 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 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 under 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

The Director contends that the administrative law judge, in determining that the evidence established a causal nexus between claimant's total disability and his pneumoconiosis under Section 718.204(b), failed to provide a sufficient explanation for his resolution of the conflicting medical opinions, and thus failed to comply with the requirements of 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), 30 U.S.C. §932(a). See Marx v. Director, OWCP, 870 F.2d 114, 12 BLR 2-199 (3d Cir. 1989); Wojtowicz v. Duquesne Light Co., 12 BLR 1-162 (1989); Robertson v. Alabama By-Products Corp., 7 BLR 1-793 (1985). We agree. Although the administrative law

judge summarized the relevant evidence of record and noted that only Dr. Mengel concluded that claimant's disability was due to smoking<sup>2</sup>, the administrative law judge failed to evaluate the credibility of the conflicting opinions and rejected Dr. Mengel's opinion without explanation. See Decision and Order at 5; see generally Ridings v. C & C Coal Co., Inc., 6 BLR 1-227, 1-230 (1983). Consequently, we vacate the administrative law judge's findings under Section 718.204(b), and remand this case for the administrative law judge to address all the relevant evidence thereunder, assign appropriate weight thereto, and provide a clear rationale for his findings on the issue of causation.

Accordingly, the Decision and Order awarding benefits and Order Denying Motion for Reconsideration of the administrative law judge are affirmed in part, vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

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<sup>2</sup> A review of the record, however, indicates that Dr. Longarini found "possible smokers bronchitis", and determined that chest x-rays were inconclusive for silicosis and that the existence of anthracosilicosis had not been proven by subjective testing. See Employer's Exhibit 2.

NANCY S. DOLDER  
Administrative Appeals Judge

DAVID A. CLARKE, JR.  
Administrative Law Judge