

BRB No. 02-0820 BLA

HASLE SIMPKINS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS=)	DATE ISSUED: 07/10/2003
)	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Jennifer U. Toth (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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 appeals the Decision and Order Denying Benefits (00-BLA-0817) of Administrative Law Judge Robert J. Lesnick (the administrative law judge) 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).¹ In adjudicating this request for

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

modification of the denial of a duplicate claim² pursuant to 20 C.F.R. Part 718, the

² Claimant initially filed a claim for benefits on June 27, 1978 which was denied by the district director because claimant failed to establish the presence of a totally disabling respiratory impairment. Director=s Exhibit 30. On December 3, 1990, claimant filed a second claim which was denied by Administrative Law Judge Glenn R. Lawrence in a Decision and Order issued on August 23, 1993. Director=s Exhibit 54. Judge Lawrence denied claimant=s request for reconsideration. Director=s Exhibit 60. Subsequent to an appeal by claimant, the Board affirmed in part, and vacated in part, the Decision and Order denying benefits. The Board held that the administrative law judge=s finding of total disability based on the newly submitted evidence established a material change in conditions, but held that the administrative law judge erred in finding that causation was not established by considering only the new evidence. Accordingly, the Board vacated the administrative law judge=s denial of benefits and remanded the case for the administrative law judge to consider all the evidence of record in determining whether claimant was entitled to benefits. Director=s Exhibit 67; *Simpkins v. Director, OWCP*, BRB No. 97-0991 BLA (Apr. 1, 1998)(unpub.). On remand, Administrative Law Judge James L. Guill concluded that the evidence of record failed to establish total disability due to pneumoconiosis and failed to establish that pneumoconiosis arose out of claimant=s two and one-half years of coal mine employment. Accordingly, benefits were

administrative law judge found that the prior finding of three years of coal mine employment by Administrative Law Judge James L. Guill should remain unchanged and that, the evidence of record failed to establish the existence of pneumoconiosis and that, even if the existence of pneumoconiosis were established, it did not arise out of coal mine employment. The administrative law judge further found that although the existence of a totally disabling respiratory impairment was conceded by the Director, Office of Workers= Compensation Programs (the Director), the evidence of record failed to establish that the total disability was due to pneumoconiosis. Accordingly, benefits were denied.

again denied. Director=s Exhibit 70. Claimant sought modification and submitted medical evidence in conjunction with that request. Director=s Exhibits 71, 73. On August 12, 2002, Administrative Law Judge Robert J. Lesnick issued the Decision and Order denying benefits from which claimant now appeals.

On appeal, claimant argues that the administrative law judge should have credited claimant with 6.779 years of coal mine employment, and should have found the existence of pneumoconiosis established based on the most recent x-ray of record which was read positive by B-readers and the most recent report by Dr. Ranavaya. Claimant also argues that Dr. Ranavaya=s opinion supports a finding that pneumoconiosis arose out of coal mine employment, and that the evidence of record supports a finding of disability causation pursuant to 20 C.F.R. ' 718.204(c). The Director responds, now conceding that the evidence of record establishes: a coal mine employment history of 6.779 years; the existence of pneumoconiosis; that the disease arose out of coal mine employment; and that claimant is totally disabled. The Director concedes, therefore, that the existence of a material change in conditions subsequent to the prior denial of benefits has been established. The Director argues, therefore, that the only contested issue remaining is whether the evidence establishes that claimant=s total disability was caused by pneumoconiosis. The Director states, however, that because the reports of the three physicians who examined claimant Aunder the auspices of the Department of Labor,@ *i.e.*, Drs. Tan, Carillo, and Ranavaya, failed to address whether claimant=s disability was caused by his pneumoconiosis, the evaluations failed to satisfy the Director=s statutory obligation to provide claimant with a complete and credible pulmonary evaluation. Accordingly, the Director requests that the case be remanded to the district director for further development of the evidence, *i.e.*, to provide claimant with a complete and credible pulmonary evaluation.³

The Board=s scope of review is defined by statute. If the administrative law judge=s findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Director urges remand for further pulmonary evaluation to provide claimant with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim, as required by the Act. *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).

³ The Director concedes the issues regarding length of coal mine employment history, the existence of pneumoconiosis, that pneumoconiosis arose out of coal mine employment and that claimant is totally disabled, *see* 20 C.F.R. ' ' 718.202(a), 718.203(c), 718.204(b). These concessions are, accordingly, tantamount to a withdrawal of the Director=s controversion of these elements. *See Pendley v. Director, OWCP*, 13 BLR 1-23(1989)(*en banc*); *Thornton v. Director, OWCP*, 8 BLR 1-27, 1-279 (1985).

The Director argues that because the opinions of Drs. Ranavaya, Tan and Carillo were not well-reasoned and/or well-documented, he has failed to provide claimant with a complete, credible pulmonary evaluation as required by Section 413(b) of the Act, 30 U.S.C. ' 923(b). *See* 20 C.F.R. ' ' 718.101, 725.405(b). Hence, we grant the Director=s request to remand this case. Accordingly, the Decision and Order of the administrative law judge is vacated and the case is remanded to the district director to provide claimant with a complete, credible, pulmonary evaluation. *See Pettry, supra; Hall, supra.*

Because we grant the request by the Director to remand this case for a complete, credible, pulmonary evaluation addressing the issue of disability causation and because the Director has conceded 6.779 years of coal mine employment, the existence of pneumoconiosis arising out of coal mine employment and total disability, we will not address claimant=s arguments regarding these issues. *See Pendley v. Director, OWCP*, 13 BLR 1-23 (1989)(*en banc*); *Thornton, supra.*

Accordingly, the Decision and Order Denying Benefits is vacated and this case is remanded to the district director for proceedings 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