

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 18-0414 BLA

RONALD LAWSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
UNICORN MINING, INCORPORATED)	
)	
and)	
)	
BIRMINGHAM FIRE INSURANCE)	DATE ISSUED: 07/12/2019
COMPANY)	
)	
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 of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Asher, Kentucky, for claimant.

Tighe Estes and Kyle Johnson (Fogle Keller Purdy, PLLC), Lexington, Kentucky, for employer/carrier.

Michelle S. Gerdano (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, 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: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2014-BLA-05493) of Administrative Law Judge John P. Sellers, III, denying benefits on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on May 3, 2013.¹

After crediting claimant with at least sixteen years of underground coal mine employment,² the administrative law judge found he did not establish the existence of complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). Because claimant further failed to establish he is totally disabled,³ the administrative law judge found he did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,⁴ 30 U.S.C. §921(c)(4) (2012), or establish entitlement to benefits pursuant to 20 C.F.R. Part 718. He therefore denied benefits.

¹ Claimant's previous claim, filed on May 4, 2001, was denied by an administrative law judge on March 21, 2005, for failure to establish pneumoconiosis or a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1. By Decision and Order dated January 31, 2006, the Board affirmed the administrative law judge's finding that the evidence did not establish pneumoconiosis, and therefore affirmed the denial of benefits. *Lawson v. Unicorn Mining, Inc.*, BRB No. 05-0604 BLA (Jan. 31, 2006) (unpub.).

² Claimant's coal mine employment was in Kentucky. Hearing Transcript at 16. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

³ The administrative law judge, however, found that claimant established clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and therefore found that claimant established a change in an applicable element of entitlement pursuant to 20 C.F.R. §718.309(c). Decision and Order at 8.

⁴ Section 411(c)(4) of the Act provides a rebuttable presumption of total disability due to pneumoconiosis where the miner had at least fifteen years of underground coal mine

On appeal, claimant argues the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete, credible pulmonary evaluation. Employer/carrier (employer) responds in support of the denial of benefits, contending claimant was provided with a complete pulmonary evaluation. The Director has filed a response, urging the Board to remand the case to the district director for further development of the medical evidence to provide claimant with a complete pulmonary evaluation.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and 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).

The Act requires that "[e]ach miner who files a claim . . . shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), as implemented by 20 C.F.R. §§718.101(a), 725.406; *see Hodges v. BethEnergy Mines*, 18 BLR 1-84 (1994).

The Director concedes the Department of Labor (DOL) failed to satisfy its obligation to provide claimant with a complete pulmonary evaluation because Dr. Ajjarapu, who conducted the DOL-sponsored pulmonary evaluation, "failed to state with specificity whether . . . [c]laimant's pulmonary condition is totally disabling." Director's Brief at 3. Although Dr. Ajjarapu opined the pulmonary function results showed "mild restriction" and the arterial blood gas results showed "mild hypoxemia," the administrative law judge acknowledged that Dr. Ajjarapu "did not clearly state whether [claimant] had a totally disabling pulmonary impairment." Decision and Order at 9; Director's Exhibit 12. Because Dr. Ajjarapu's opinion does not address essential elements of entitlement, i.e., whether claimant is totally disabled by pneumoconiosis, the Director requests that the case be remanded for Dr. Ajjarapu to provide a supplemental report addressing the issues. *Id.* On these facts, and given the Director's concession that the Department of Labor failed to provide claimant with a complete pulmonary evaluation as required by the Act, we grant the Director's request to remand this case. 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406; *Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 641-42 (6th Cir. 2009); *R.G.B. [Blackburn] v. Southern Ohio Coal Co.*, 24 BLR 1-129 (2009) (en

employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

banc). Consequently, we vacate the administrative law judge's denial of benefits.

Accordingly, the administrative law judge's Decision and Order is vacated, and the case is remanded to the district director for further development of the evidence and for reconsideration of the merits of this claim in light of all the evidence.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge