

BRB No. 99-0359 BLA

EVERETT E. CLARK)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT OF)	
LABOR)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Edward C. Burch, Administrative Law Judge, United States Department of Labor.

Everett E. Clark, Fresno, California, *pro se*.

Jill M. Otte (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: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order Denying Benefits (95-BLA- 2038) of Administrative Law Judge Edward C. Burch 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). Claimant filed an application for benefits on August 25, 1992. Director' s Exhibit 1. The administrative law judge also found that claimant filed a prior claim in February 1981 and that this claim was still pending. The administrative law judge found that the August 25, 1992 application merged into the February 1981 claim, but that the case is still governed by the regulations which are set forth in 20 C.F.R. Part 718. The administrative law judge found that the parties stipulated

¹ Betty L. Clark filed an appeal of the administrative law judge's Decision and Order Denying Benefits, but Ms. Clark is not representing claimant on appeal. *See generally Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

that claimant established eleven and one-half years of coal mine employment. The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 10. Further, the administrative law judge found that claimant's pneumoconiosis arose from his coal mine employment under 20 C.F.R. §718.203. However, the administrative law judge found that claimant did not establish that he is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, the administrative law judge denied benefits. Claimant appeals, arguing generally that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs has filed a motion to remand the case to the district director for the development of additional medical evidence.

In an appeal by a claimant proceeding 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 Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

We grant the Director's request to remand this case, given the Director's concession that the Department of Labor has not met its obligation to provide claimant with a complete and credible evaluation as required by the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 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.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated, 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.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge