

BRB No. 07-0446 BLA

E. M.)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 03/26/2008
)	
ISLAND CREEK COAL COMPANY)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

E. M., Clintonville, West Virginia, *pro se*.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Sarah M. Hurley (Gregory F. Jacob, Solicitor of Labor; 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: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2003-BLA-0149) of Administrative Law Judge Alice M. Craft rendered 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 administrative law judge found that claimant had at least twenty-three years of coal mine

employment. Decision and Order at 3. After determining that this case involves a subsequent claim under 20 C.F.R. §725.309, the administrative law judge found that the newly submitted evidence did not establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b)(2).¹ Decision and Order at 17. The administrative law judge concluded, therefore, that claimant failed to establish at least one of the conditions of entitlement previously adjudicated against him, and denied the subsequent claim. *Id.*

On appeal, claimant asserts generally that the administrative law judge erred in denying benefits. Claimant also maintains that he did not receive a complete pulmonary evaluation as required under the Act, as Dr. Mullins, who performed an examination of claimant at the request of the Department of Labor, stated at her deposition that her examination was defective. In response, employer urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), initially filed a letter stating that he would not submit a response brief in this appeal. Based upon claimant's specific argument that the Director did not satisfy his obligation to provide claimant with a complete pulmonary evaluation, the Board issued an Order requesting that the Director address this issue. *E.M. v. Island Creek Coal Co.*, BRB No. 07-0446 BLA (Feb. 29, 2008)(unpub. Order). In his response, the Director concedes that the pulmonary evaluation performed by Dr. Mullins was deficient, and requests that the Board remand the case to the district director so that the defects in Dr. Mullins's report can be cured.

In an appeal filed by a claimant 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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹ Claimant filed a claim for medical benefits only on December 21, 1980. Director's Exhibit 1. This claim was not processed because claimant did not provide proof that he had been found entitled to black lung benefits. *Id.* On December 15, 1993, claimant filed a claim for black lung benefits. Director's Exhibit 2. Administrative Law Judge Edward Miller denied the claim in a Decision and Order dated March 8, 1996, on the ground that the evidence was insufficient to establish the existence of pneumoconiosis, without reaching the issues of total disability or total disability causation. *Id.* Claimant filed his current claim on January 23, 2001. Director's Exhibit 4.

We will first address claimant's specific contention that he did not receive a complete pulmonary evaluation, as required by the Act. In his response to the Board's Order, the Director agrees that he has not satisfied his obligation under Section 413(b), 30 U.S.C. §923(b), by virtue of Dr. Mullins's opinion and states that "the denial of benefits must be vacated and the case must be remanded to allow Dr. Mullins to clarify and correct her opinion[.]" Director's Response Letter at 3. The Director specifically cites Dr. Mullins's failure to adequately address the issue of the existence of pneumoconiosis because she did not identify the cause of the chronic obstructive pulmonary disease that she diagnosed. *Id.* at 2; Director's Exhibits 15, 40. The Director also notes that in light of Dr. Mullins's admission that the blood gas study that she obtained was flawed, as the study was performed while claimant was receiving supplemental oxygen, her opinion regarding the issue of total disability is not accurate. *Id.* Because the Director concedes that he has not satisfied his statutory obligation, we vacate the denial of benefits and remand this case to the district director to provide claimant with a complete and 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, 725.401, 725.405(b); *see Cline v. Director, OWCP*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *Petry v. Director, OWCP*; 14 BLR 1-98 (1990).²

² In view of our disposition of this case, we decline to address any additional contentions of the parties in this appeal. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-89-90 (1994).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated and the case is remanded to the district director to remedy the defects present in Dr. Mullins's evaluation and for reconsideration of this claim.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge