

BRB No. 03-0297 BLA

GEORGE FIELDS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
)	DATE ISSUED: 09/30/2003
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Tracey E. Burkett (Appalachian Research & Defense Fund of Kentucky, Inc.), Hazard, Kentucky, for claimant.

Jeffrey S. Goldberg (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-Denial of Benefits (02-BLA-0429) of Administrative Law Judge Daniel J. Roketenetz 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 The administrative law judge based his findings on the record and testimony given in a prior hearing in October 2001. The administrative law judge determined that claimant established twelve and one-half years of coal mine employment. The administrative law judge further found that the evidence established that claimant is totally disabled, but that he does not suffer from pneumoconiosis or total disability due to pneumoconiosis pursuant to 20 C.F.R. Part 718. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred by failing to conduct a formal hearing as requested by claimant. Claimant further contends that the administrative law judge erred in according determinative weight to Dr. Wicker's opinion regarding the issue of the existence of pneumoconiosis, and failed to accord the proper weight to Dr. Alam's opinion as he is claimant's treating physician. Lastly, claimant contends that the administrative law judge erred in his computation of the years of coal mine employment. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to vacate and remand the case to the administrative law judge to conduct a formal hearing.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable 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).

This case has been before the Board previously. In our prior decision, we remanded the case to the district director so that a complete and credible pulmonary examination for claimant could be obtained.² *Fields v. Director, OWCP*, BRB No. 99-1158 BLA (Aug. 10, 2000)(unpub.). Claimant was provided with an examination and on November 21, 2000, the district director denied benefits. Director's Exhibit 51. Claimant requested a formal hearing before an administrative law judge, Director's Exhibit 52, which was held on October 2, 2001. Director's Exhibit 58. In his post-hearing brief, claimant argued that if the administrative law judge did not award benefits, the case should be remanded for another complete pulmonary examination in light of the

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. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² In the interest of judicial economy, the Board also addressed various arguments raised concerning the weight accorded to certain evidence in the record. *Fields v. Director, OWCP*, BRB No. 99-1158 BLA (Aug. 10, 2000)(unpub.).

invalidation of claimant's pulmonary function and blood gas studies, Director's Exhibits 43, 47, and for the district director to further consider the evidence regarding the length of coal mine employment. Director's Exhibit 60. Claimant attached evidence to the post-hearing brief in support of his alleged number of years of coal mine employment. The Director objected to claimant's evidence, as being violative of the "20 day rule" pursuant to 20 C.F.R. §725.456(b)(2). However, the Director stated that he had no objection to the case being remanded to the district director for consideration of the evidence related to length of coal mine employment and for the purpose of reviewing the medical evidence to determine if claimant received a complete pulmonary examination. Director's Exhibit 61. On January 8, 2002, the administrative law judge remanded the case to the district director. Director's Exhibit 62.

The district director found that claimant had already received a complete pulmonary examination and would therefore not authorize any further medical tests. Director's Exhibit 67. Claimant submitted additional evidence, an opinion by Dr. Alam, Director's Exhibit 68, but the district director denied the claim on May 14, 2002. Claimant was also advised that if he wished to request a hearing before an administrative law judge, he must make his request within sixty days of the denial letter. Director's Exhibit 69. Claimant responded that the district director had not addressed the issues of the length of coal mine employment and whether a complete pulmonary evaluation had been obtained, and requested a hearing. Director's Exhibit 70. On June 10, 2002, the district director reiterated that on March 19, 2002, a determination had been made that claimant received a complete pulmonary evaluation, and also found that claimant worked for a total of ten years in the coal mines. Director's Exhibit 71. The claim was then forwarded to the Office of Administrative Law Judges for a formal hearing. Director's Exhibit 72.

On September 24, 2002, the administrative law judge issued an Order to Show Cause why in light of the claimant's previous hearing in October 2001, a second hearing should be granted. Claimant responded that the district director had failed to evaluate the evidence regarding the length of coal mine employment and to determine whether a complete pulmonary examination had been provided. Claimant additionally stated that he wanted the opportunity to testify about his present physical condition and disability. Although the administrative law judge agreed that the district director failed to evaluate the issue of the length of coal mine employment, he denied claimant's request for a hearing on the ground that it would be an unnecessary use of judicial resources, as claimant failed to show why an additional hearing was necessary to reach a fair decision. Decision and Order at 4.

The regulations provide that any party to a claim has a right to a hearing concerning any contested issue of fact or law unresolved by the district director, *see* 20 C.F.R. §725.450, unless such a hearing is waived by the parties, *see* 20 C.F.R.

§725.461(a), or a party requests summary judgment, *see* 20 C.F.R. §725.452(c). Under the particular facts of this case, we vacate the administrative law judge’s Decision and Order and remand the case to the administrative law judge to conduct a hearing. *See Pyro Mining Co. v. Slaton*, 879 F.2d 187, 12 BLR 2-328 (6th Cir. 1989); *see also Robbins v. Cyprus Cumberland Coal Co.*, 146 F.3d 425, 21 BLR 2-495 (6th Cir. 1998); *Cunningham v. Island Creek Coal Co.*, 144 F.3d 388, 21 BLR 2-384 (6th Cir. 1998). Consequently, we decline to address claimant’s contentions regarding the administrative law judge’s findings of fact in his decision below.

Accordingly, the administrative law judge’s Decision and Order–Denial of benefits is vacated and the case is remanded for further 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