

BRB No. 94-0174 BLA

GLENN T. HUBLER)
)
 Claimant-Petitioner)
)
 v.)
) DATE ISSUED: _____)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Frank D. Marden, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.
Eileen M. McCarthy (Thomas S. Williamson, Jr., 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 DOLDER, Administrative Appeals Judges, and SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (93-BLA-0681) of Administrative Law Judge Frank D. Marden denying benefits 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 a claim for benefits on April 9, 1992. The administrative law judge considered the claim pursuant to 20 C.F.R. Part 718 and determined that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in failing to find that claimant established the existence of pneumoconiosis pursuant to

Section 718.202(a). The Director,

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

Office of Workers' Compensation Programs (the Director), in a motion for remand, concedes that claimant has established the existence of pneumoconiosis and requests that the case be remanded to the administrative law judge for further consideration.

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are in accordance with 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).

On appeal, claimant contends that the administrative law judge erred in failing to find that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a). However, the Director, in a motion for remand, concedes that claimant has established that he suffers from pneumoconiosis. See Director's Motion For Remand at 2. As a result of the Director's concession, the existence of pneumoconiosis is no longer an issue that needs to be resolved by the administrative law judge or addressed by the Board. See *Kott v. Director, OWCP*, 17 BLR 1-9 (1992). Further, as the administrative law judge failed to consider any issue beyond whether claimant established the existence of pneumoconiosis, he must now determine whether claimant's pneumoconiosis arose from his coal mine employment and whether such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.203, 718.204; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). As a result, the administrative law judge's Decision and Order denying benefits is vacated and the case is remanded for the administrative law judge to consider the remaining issues relevant to claimant's entitlement to benefits.

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER

Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge