

BRB No. 07-0561

A.K.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
L-3 COMMUNICATIONS-)	DATE ISSUED: 07/07/2008
TITAN CORPORATION)	
)	
and)	
)	
INSURANCE COMPANY OF THE)	
STATE OF PENNSYLVANIA/)	
AIG WORLDSOURCE)	
)	
Employer/Carrier-)	DECISION and ORDER
Petitioners)	on RECONSIDERATION

Claimant has filed a timely motion for reconsideration *en banc* of the Board's decision in this case, *A.K. v. L-3 Communications-Titan Corp.*, BRB No. 07-0561 Mar. 19, 2008)(unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §§802.407, 802.409. Employer responds, urging the Board to reject claimant's motion. For the following reasons, we deny the request for reconsideration.¹

To recapitulate, claimant was employed by employer as an Arabic and Kurdish translator for the United States Army at a military base in Iraq. On July 1, 2003, in the

¹ As a majority of the permanent Board members has denied reconsideration, the request for reconsideration *en banc* is also denied. 20 C.F.R. §801.407(d).

course of his employment with employer, claimant was exposed to sulfur smoke and, as a result thereof, he developed reactive airways disease (RAD). It is uncontested that claimant's RAD precludes him from performing his former work as a translator for employer in Iraq.² Employer voluntarily paid temporary total disability benefits to claimant until July 20, 2006, when it suspended its payment of benefits to claimant.

Pertinent to claimant's motion for reconsideration, the administrative law judge found that employer failed to establish the availability of suitable alternate employment. In its appeal to the Board, employer argued, *inter alia*, that the administrative law judge failed to provide a sufficient discussion of the evidence relevant to this issue. In its decision, the Board agreed with employer that the administrative law judge did not fully address, and did not provide a reasoned analysis of, the evidence relevant to the availability of suitable alternate employment. The Board therefore vacated the administrative law judge's determination that employer did not establish the availability of suitable alternate employment and remanded the case to the administrative law judge for further consideration of this issue.

In his motion for reconsideration, claimant asserts that the administrative law judge considered all of the evidence and made reasonable credibility determinations in

² Following his July 1, 2003 exposure to sulfur smoke, claimant remained employed by employer as a translator in Iraq until May 2004, when, upon medical advice, claimant returned to his home in St. Louis, Missouri to seek medical treatment from a specialist for his RAD.

concluding that employer did not establish the availability of suitable alternate employment; thus, claimant contends that the Board exceeded the scope of its authority in vacating the administrative law judge's determination and remanding the case for further consideration of this issue. Employer responds that the Board properly vacated and remanded the case as the administrative law judge did not undertake a sufficient analysis of the evidence relevant to the suitable alternate employment issue.

It is well-established that an administrative law judge must independently analyze and discuss the relevant evidence, and must adequately detail the rationale behind his decision. *See* 5 U.S.C. §557(C)(3)(A); *Bath Iron Works Corp. v. Director, OWCP [Jones]*, 193 F.3d 27, 31-32, 34 BRBS 1, 4(CRT) (1st Cir. 1999); *See v. Washington Metropolitan Area Transit Authority*, 36 F.3d 375, 384, 28 BRBS 96, 106(CRT) (4th Cir. 1994); *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 14 BRBS 538 (2^d Cir. 1982); *Gremillion v. Gulf Coast Catering Co.*, 31 BRBS 163, 168 (1997). Where the administrative law judge's conclusions of law are made without the proper factual underpinning, the Board is not permitted to supplement the administrative law judge's findings with its own but, rather, must remand the case for the administrative law judge to make the necessary findings. *See Jones*, 193 F.3d 27, 34 BRBS 1 (CRT); *Volpe*, 671 F.2d 697.

In this case, although the administrative law judge included a lengthy summary of the evidence in the section of his Decision and Order entitled "Statement of the Case,"

Decision and Order at 3-12, he did not discuss all of the relevant evidence or render adequate findings with respect to the conflicting evidence at the point in the “Discussion” section of his Decision and Order where he made actual findings regarding the credibility of the witnesses, *id.* at 13-14, and regarding the issue of whether employer established the availability of suitable alternate employment. *Id.* at 16. In its decision, the Board held that the administrative law judge’s conclusion that employer did not establish the availability of suitable alternate employment was not based on a full evaluation of the record, and thus, the Board was required to vacate that finding and remand the case for the administrative law judge to fully consider and analyze all of the relevant evidence and to provide a discussion of the rationale behind his conclusions. *See, e.g., Gremillion*, 31 BRBS 163.

The Board explained in this regard that the administrative law judge did not provide an adequate discussion of the evidence relevant to the issue of claimant’s ability to work in settings outside of his own home. *A.K., slip op.* at 5. The Board identified evidence that was not addressed by the administrative law judge in the “Discussion” portion of his Decision and Order, including a surveillance videotape and claimant’s testimony regarding his driving and other activities outside his home. *Id.* Moreover, the Board stated that the administrative law judge’s discussion of this issue did not include an analysis of the opinions of Drs. Botney and Bruce with respect to claimant’s work restrictions. *Id.* The Board therefore remanded the case for the administrative law judge

to evaluate and weigh all of the evidence relevant to the issue of whether claimant is able to work outside of his home and to provide the rationale for his findings. *Id.* at 5-6.

In addition, the Board held that the administrative law judge did not consider the totality of the testimony of Beverly G. Brooks, employer's vocational expert, and, accordingly, directed the administrative law judge on remand to consider all of her testimony. *A.K.*, slip op. at 6-8. In this regard, the Board stated that the administrative law judge did not address relevant testimony by Ms. Brooks regarding the environmental conditions present at jobs she found to be suitable alternate employment for claimant that would be performed outside of his home. *Id.* at 6. The Board also stated that the administrative law judge did not provide a reasoned analysis of Ms. Brooks's testimony regarding home-based translator jobs that she considered to be suitable alternate employment for claimant. *Id.* at 7-8.

Claimant's arguments in support of his motion for reconsideration do not establish any error committed by the Board in its decision in this case. Thus, the Board did not exceed the scope of its review authority. Rather, as the record contains relevant evidence not fully considered by the administrative law judge and as the administrative law judge's decision does not include a sufficient discussion of the reasons for his findings, the Board appropriately vacated the administrative law judge's conclusion that the availability of suitable alternate employment was not established and remanded the case for further consideration of this issue.

Accordingly, claimant's motion for reconsideration is denied. 20 C.F.R.
§802.409.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge