U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 18-0147 BLA

WILLIE WILLIAMS Claimant-Respondent v. GOLDEN OAK MINING COMPANY LIMITED PARTNERSHIP and SECURITY INSURANCE COMPANY OF HARTFORD Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 04/29/2019 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

John C. Morton and Austin P. Vowels (Morton Law LLC), Henderson, Kentucky, for employer/carrier.

Jeffrey S. Goldberg (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, 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: BOGGS, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2015-BLA-5159) of Administrative Law Judge John P. Sellers, III,[1] on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's subsequent claim filed on December 17, 2013.[2]

The administrative law judge determined that employer is the properly designated responsible operator. He also found claimant established at least twenty-one years of coal mine employment, with all but six months underground, and a totally disabling respiratory or pulmonary impairment. Thus, the administrative law judge determined claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c),[3] and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4)

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[1] Administrative Law Judge Alice M. Craft conducted the hearing in this claim on October 18, 2016. *See* Hearing Transcript at 1. Judge Craft retired from the Office of Administrative Law Judges on October 31, 2017 and this claim was reassigned to Administrative Law Judge John P. Sellers, III (the administrative law judge) for decision.

[2] Claimant's prior claim, filed on August 2, 1991, was denied by the district director on January 21, 1992, because claimant did not establish that he had pneumoconiosis or that he had a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1. Claimant did not take any further action until he filed his current claim. Director's Exhibit 3.

[3] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that at least "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c). The applicable conditions of entitlement are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). Claimant's prior claim was denied because he did not establish any element of entitlement. Director's Exhibit 1. Consequently, to obtain review of the merits of his claim, claimant had to establish one element of entitlement. 20 C.F.R. §725.309(c)(3), (4).

of the Act, 30 U.S.C. §921(c)(4) (2012).[4] He further found employer did not rebut the presumption and awarded benefits.

On appeal, employer argues the administrative law judge erred in determining it is the responsible operator. Employer also asserts the administrative law judge erred in finding claimant invoked the Section 411(c)(4) presumption and that employer did not rebut it. Claimant has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response urging affirmance of the administrative law judge's finding that employer is the properly designated responsible operator.[5]

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 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).

I. Responsible Operator

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner." 20 C.F.R. §725.495(a)(1). A coal mine operator is a "potentially liable operator" if it meets the

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[4] Under Section 411(c)(4) of the Act, claimant is presumed to be totally disabled due to pneumoconiosis if he has at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(b).

[5] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established at least twenty-one years of underground employment, with all but six months underground. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

[6] Because claimant's last coal mine employment was in Kentucky, we will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3; Hearing Transcript at 10; Director's Exhibit 14 at 15.

criteria set forth at 20 C.F.R. §725.494(a)-(e).[7] Once a potentially liable operator has been identified by the Director, it may be relieved only if it proves either that it is financially incapable of assuming liability for benefits, or that another financially-capable operator more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

If a successor relationship is established, a miner's tenure with a prior and successor operator may be aggregated to establish one year of employment. *See* 20 C.F.R. §§725.101(a)(32), 725.103, 725.494(c). A "successor operator" is "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such operator, or substantially all of the assets thereof[.]" 20 C.F.R. §725.492(a).

In finding that employer, Golden Oak Mining Company, LP (GO LP) is the responsible operator, the administrative law judge rejected employer's arguments that GO LP is a separate entity from Golden Oak Mining Company, Inc. (GO Inc.) and that claimant's periods of employment with the two cannot be aggregated. Decision and Order at 4-5. In the alternative, he determined that, even if the two companies are separate, employer would still be the properly designated responsible operator because GO LP alone employed claimant for a cumulative period of one year.[8] *Id.* at 5.

We reject employer's assertion that the administrative law judge erred in finding it the properly designated responsible operator.[9] The administrative law judge observed that

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[7] In order for a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

[8] The administrative law judge determined claimant worked for Golden Oak Mining Company LP (GO LP) from 1989 until June 9, 1990 and remained on its payroll in injured status until 1991, establishing at least a year of employment. Decision and Order at 5.

[9] Employer's assertion the district director erred in designating it as a potentially liable operator with the burden to establish it is not the responsible operator lacks merit. Employer's Brief at 11-12; *see* 20 C.F.R. §§725.495(b), (c)(2). The district director notified employer it was a potentially liable operator and provided it ninety days to submit

claimant's Social Security Administration (SSA) earnings record shows claimant worked for GO Inc. in 1987,[10] 1988, and 1989, and GO LP in 1989, 1990 and 1991, and that his testimony establishes they were essentially the same company.[11] *Id*. Claimant interchangeably referred to his last employer as "Golden Oak," "Golden Oak Mining," or "Golden Oak Mining Company," and consistently testified that his employment there lasted "about seven years," and that he did not work for a different company during his last year of employment. Hearing Transcript at 11, 15, 16; Director's Exhibits 14 at 5, 7, 10; 26 at 21. Further, on his Employment History form, claimant listed his most recent employment as being with "Golden Oak" from 1985 to 1990. Director's Exhibit 1-186.

There is no merit to employer's assertion that records from the Kentucky Secretary of State definitively establish that GO LP and GO Inc. are unrelated companies. The records show GO LP filed as a limited partnership on June 30, 1989, shortly before GO Inc. filed its "last annual report" on July 19, 1989. Director's Exhibit 26 at 45-47. Moreover, a Certificate of Assumed Name was issued to GO LP on July 31, 1989, with the "assumed name" listed as "Golden Oak Mining Company." Director's Exhibit 26 at 45-46. The records thus supports the administrative law judge's determination that employer failed to prove GO Inc. "did not simply reorganize or legally change its name to [GO

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documentary evidence contesting its designation. 20 C.F.R. §725.408; Director's Exhibit 15. Employer timely controverted its designation, but submitted no documentary evidence within ninety days. Director's Exhibits 16, 17. The district director then determined "Golden Oak Mining" employed claimant from 1987 to 1991 and that no subsequent coal mine employment was alleged. Director's Exhibit 21, *referencing* Director's Exhibits 1 at 186; 6, 7; *see also* Director's Exhibit 36 (GO Inc. is the same company as GO LP). On appeal, employer does not point to any specific error by the district director and the documentary evidence upon which it now relies was untimely submitted.

[10] While claimant's Social Security Administration (SSA) earnings records show employment with GO Inc. beginning in 1987, payroll records from GO Inc. show employment beginning in 1985. Director's Exhibits 6, 7. Whether claimant's employment began in 1985 or 1987 does not affect the outcome of this case.

[11] Claimant's testimony could also support a successor relationship between GO Inc. and GO LP. Director's Brief at 7; Director's Exhibit 26 at 21-22, 35-36. Whether GO Inc. and GO LP are the same company, or GO LP is a successor to GO Inc., is irrelevant, however. In either case, employment with GO Inc. constitutes employment with GO LP, establishing GO LP as the operator that most recently employed claimant for at least one year. 20 C.F.R. §§725.492(a), (b), 725.493(b)(1), 725.494; Director's Brief at 6.

LP]."[12] Decision and Order at 5. Accordingly, we find no error in the administrative law judge's determination that claimant's combined employment with GO Inc. and GO LP from at least 1987 to June 1990 is employment with GO LP. 20 C.F.R. §725.493(b)(1). We therefore affirm the administrative law judge's finding that employer is the properly designated responsible operator.[13] 20 C.F.R. §§725.494, 725.495(c); *see Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005).

II. Invocation of the Section 411(c)(4) Presumption – Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). Total disability can be established by qualifying[14] pulmonary function or arterial blood gas studies, evidence of pneumoconiosis and cor

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[12] We reject employer's contention that the administrative law judge erred in failing to consider claimant's December 19, 1991 deposition testimony which, employer asserts, establishes that GO Inc. and GO LP are completely separate entities. Employer's Brief at 12. Employer relies on claimant's testimony that R&B/GO Inc. and GO LP were "two different things" and he only began working for GO LP "a year and something ago." Employer's Brief at 12, *referencing* Director's Exhibit 26 at 21, 35. Employer has taken claimant's statements out of context: he twice stated that R&B/GO Inc. "sold out" to GO LP. Director's Exhibit 26 at 21, 36. If credited, the testimony supports the conclusion that GO LP is the successor to GO Inc. and that GO LP is the responsible operator. 20 C.F.R. §§725.492(a), (b), 725.493(b)(1), 725.494. Thus, employer has not shown how failing to address the testimony constitutes reversible error. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

[13] In light of our affirmance of the administrative law judge's determination that employer did not satisfy its burden of proof at 20 C.F.R. §725.495(c), we decline to address employer's argument that the administrative law judge erred in finding, in the alternative, claimant worked solely for GO LP for a cumulative period of not less than one year. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983); Decision and Order at 5.

[14] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study yields values that exceed those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). If the administrative law judge finds disability established under one or more subsections, he must weigh that evidence against the contrary probative evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The administrative law judge found claimant established total disability based on pulmonary function studies, medical opinions, and the record as a whole.[15] Decision and Order at 17-20. The administrative law judge considered eight new pulmonary function studies. Decision and Order at 8-9, 13-15. The earliest, performed on November 22, 2011, January 31, 2013, and November 25, 2013, had non-qualifying values. Decision and Order at 14; Claimant's Exhibits 5; 11 at 69, 72. The next study, dated March 26, 2014, had qualifying pre-bronchodilator values and non-qualifying post-bronchodilator values.[16] Decision and Order at 14; Director's Exhibit 10. Finally, the July 28, 2014, September 11, 2014, November 3, 2014, and March 7, 2016 studies all had qualifying values.[17] Decision and Order at 14; Claimant's Exhibits 4; 11 at 57, 65; Employer's Exhibit 1.

The administrative law judge found the validity of the three most recent studies "questionable," based on comments by Dr. Jarboe and the administering technicians and

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[15] The administrative law judge determined the two qualifying blood gas studies, performed on December 24, 2015, were insufficient to establish disability because they were done while claimant was in the hospital for treatment of acute respiratory failure due to pneumonia. Decision and Order at 13, *citing* 20 C.F.R. Part 718, Appendix C; Claimant's Exhibit 12. There is no evidence claimant suffers from cor pulmonale with right-sided congestive heart failure, or complicated pneumoconiosis. 30 U.S.C. §921(c)(3) (2012); 20 C.F.R. §§718.204(b)(1), 718.304.

[16] Dr. Ajjarapu performed this study as part of the Department of Labor (DOL)-sponsored pulmonary evaluation. Director's Exhibit 10. The technician conducting the study rated claimant's cooperation and understanding as good; Dr. Gaziano reviewed the study and deemed the results acceptable. Decision and Order at 14; Director's Exhibit 10.

[17] The July 28, 2014 study has pre-bronchodilator values only. The remaining three studies produced qualifying results both before and after the administration of bronchodilators. Claimant's Exhibits 4; 11 at 57, 65; Employer's Exhibit 1.

accorded them no weight.[18] Decision and Order at 14. Relying on the qualifying pre-bronchodilator values[19] of the March 26, 2014 and July 28, 2014 studies, as the most recent valid studies, the administrative law judge found the pulmonary function study evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(i). *Id*.

We agree with employer, however, that the administrative law judge failed to adequately consider the pulmonary function studies in light of the relevant quality standards and that it impacted his evaluation of the medical opinions. Employer's Brief at 4-7. When weighing pulmonary function studies, the administrative law judge must determine whether they are in substantial compliance with the quality standards.[20] 20

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[18] Dr. Jarboe found the September 11, 2014 study invalid because claimant "failed to produce a maximum, consistent effort throughout the exhalation maneuver" and because his "efforts [were] very variable from one to another." Employer's Exhibit 1. The technician who administered the November 3, 2014 study found the results "questionable due to the patient's inability to perform the maneuvers." Claimant's Exhibit 11 at 65. On the March 7, 2016 study, the technician noted that the "[p]rebronchodilator is not reproducible." Claimant's Exhibit 11 at 57.

[19] The administrative law judge permissibly accorded greater weight to the pre-bronchodilator values of the March 26, 2014 study because, "[w]hen making disability determinations, the question is whether the miner is able to perform his job, not whether he is able to perform his job after he takes medication." *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); 45 Fed. Reg. 13.678, 13,682 (Feb 29, 1980); Decision and Order at 14.

[20] The pulmonary function studies in claimant's treatment records are not subject to the quality standards. 20 C.F.R. §725.414(a)(4); *see J.V.S.* [*Stowers*] *v. Arch of West Virginia/Apogee Coal Co.*, 24 BLR 1-78, 1-92 (2008). Nevertheless, they must be found sufficiently reliable to support a finding of total disability. 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000) ("Despite the inapplicability of the quality standards to certain categories of evidence, the adjudicator still must be persuaded that the evidence is reliable in order for it to form the basis for a finding of fact on an entitlement issue."). The administrative law judge observed that the pulmonary function studies dated November 25, 2013, March 26, 2014, July 28, 2014 and September 11, 2014, were obtained by the parties for the purposes of litigation. Decision and Order at 8; Director's Exhibit 10 at 15; Claimant's Exhibits 4, 5; Employer's Exhibit 1 at 11. He identified as treatment records the studies performed on November 22, 2011, January 31, 2013, November 3, 2014 and March 7, 2016. Decision and Order at 8-9; Claimant's Exhibit 11 at 57, 65, 69, 72.

C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). If a study does not precisely conform to the quality standards, but is in substantial compliance, the administrative law judge must determine whether it constitutes credible evidence of claimant's pulmonary function. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987) (Levin, J., concurring).

The administrative law judge erred crediting the March 26, 2014 and July 28, 2014 qualifying studies without addressing all the evidence questioning their validity.[21] When crediting the March 26, 2014 pulmonary function study, the administrative law judge considered claimant's effort and cooperation, and Dr. Gaziano's validation. He did not address, however, whether records showing that claimant was treated for pneumonia at the emergency room of Saint Joseph London Hospital on March 23, 2014, establish the study was "performed during or soon after an acute respiratory illness," which is prohibited under the quality standards. 20 C.F.R. Part 718, Appendix B (2)(i); Claimant's Exhibit 12.

Further, the quality standards provide, in relevant part, that "[p]ulmonary function test results developed in connection with a claim for benefits shall also include a statement signed by the physician or technician conducting the test setting forth . . . [the n]ame of [the] technician . . [and the n]ame and signature of [the] physician supervising the test." 20 C.F.R. §718.103(b)(3), (4). The administrative law judge did not consider the absence of this information from the July 28, 2014 study, or the notation from the technician that the conclusion the test reflects a severe restrictive impairment is an "unconfirmed interpretation" that a physician "should review." Claimant's Exhibit 4. Because the administrative law judge did not consider all relevant evidence in finding the March 26,

[21] We note employer's contention that the substantial improvement in claimant's values after the administration of bronchodilators during the March 26, 2014 pulmonary function study establishes that "his ailment could not possibly be pneumoconiosis, as it is considered irreversible." Employer's Brief at 22. This argument is not relevant to the inquiry at 20 C.F.R. §718.204(b)(2), which concerns whether claimant has a totally disabling respiratory or impairment. The cause of the impairment is addressed at 20 C.F.R. §718.204(c), or at 20 C.F.R. §718.305(d)(1)(ii) in the context of rebuttal of the Section 411(c)(4) presumption. Further, we reject employer's allegation that the July 28, 2014 pulmonary function study is invalid because no post-bronchodilator test was performed. There is no requirement in the regulations that a pulmonary function study include the administration of bronchodilators in order to be credited as evidence supporting the diagnosis of a totally disabling respiratory or pulmonary impairment. *See* 20 C.F.R. §718.103; 20 C.F.R. Part 718, Appendix B.

2014 and July 28, 2014 pulmonary function studies valid, we must vacate his finding that they established total disability at 20 C.F.R. §718.204(b)(2)(i) and remand the case to the administrative law judge for consideration of this evidence. *See* 30 U.S.C. §923(b).

We also agree with employer that the errors in evaluating the pulmonary function study evidence impacted the evaluation of Dr. Ajjarapu's opinion. The administrative law judge relied on Dr. Ajjarapu, the sole physician to diagnose a disabling pulmonary impairment, to find disability established at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 15. Because Dr. Ajjarapu based her opinion on the March 26, 2014 pulmonary function study, we must vacate this finding. Consequently, we vacate the administrative law judge's findings that claimant established total disability at 20 C.F.R. §718.204(b)(2), invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, and established a change in an applicable condition of entitlement at 20 C.F.R. §725.309.[22]

III. Remand Instructions

The administrative law judge must first reconsider the March 26, 2014 and July 28, 2014 pulmonary function studies to determine whether they are in substantial compliance with the quality standards, such that they constitute credible evidence of claimant's pulmonary condition. 20 C.F.R. §718.103; 20 C.F.R. Part 718, Appendix B; *see Keener*, 23 BLR at 1-237; *Orek*, 10 BLR at 1-54-55. He must then reconsider whether the new pulmonary function study evidence as a whole establishes total disability at 20 C.F.R. §718.204(b)(2)(i). The administrative law judge must also reconsider Dr. Ajjarapu's medical opinion at 20 C.F.R. §718.204(b)(2)(iv), in light of his findings regarding the pulmonary function study evidence.[23]

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[22] Because we have vacated the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption, we decline to address employer's allegation that the administrative law judge erred in determining employer failed to rebut the presumption. If the administrative law judge again finds that claimant has invoked the Section 411(c)(4) presumption, employer may challenge the administrative law judge's findings on rebuttal in a future appellate proceeding.

[23] If the administrative law judge finds that Dr. Ajjarapu administered an invalid pulmonary function test as part of the DOL-sponsored pulmonary evaluation, and that she relied on that study to diagnose total pulmonary disability, he must determine whether Dr. Ajjarapu's report is incomplete on total disability, a requisite element of entitlement. 20 C.F.R. §725.406; *see Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 641-42 (6th Cir. 2009). Should the administrative law judge find Dr. Ajjarapu's report incomplete, he

After reconsidering whether the new pulmonary function studies and medical opinions establish total disability, the administrative law judge must weigh all the relevant new evidence to determine whether claimant has established a totally disabling respiratory impairment, invocation of Section 411(c)(4), and a change in an applicable condition of entitlement.[24] The administrative law judge must set forth his findings in detail, including the underlying rationales, in compliance with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1985).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

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must remand the case to the district director to cure the defects in the DOL-sponsored pulmonary evaluation, such that claimant is provided an opportunity to substantiate his claim by complete pulmonary evaluation, as required by the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.401, 725.405(b); *see Hodges v. BethEnergy Mines Inc*., 18 BLR 1-84, 1-93 (1994).

[24] Failure to establish disability precludes an award of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).