BRB No. 00-1159 BLA

LAWRENCE GRIFFITH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DOMINION COAL CORPORATION	)	
	)	DATE ISSUED:
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 of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Lawrence Griffith, Raven, Virginia, *pro se*.

Ronald E. Gilbertson (Bell, Boyd & Lloyd, PLLC), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order (00-BLA-767) of Administrative Law Judge John C. Holmes denying modification and benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and

[1]Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).[2] The administrative law

[2]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 65 Fed. Reg. 80,045-80,107 (2000) (to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*,

judge properly noted that the parties agreed to a decision on the record and that the instant claim was a modification request of a previous denial.[3] Decision and Order at 1-2. The administrative law judge, after noting that the prior claims were denied because claimant failed to establish total disability, concluded that the new medical evidence strongly confirms the previous judicial determinations. Decision and Order at 1. Accordingly, benefits were denied. On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs has filed a letter indicating that he will not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

[3]The procedural history of this case has previously been set forth in detail in the Board's prior decision in *Griffith v. Dominion Coal Corp.*, BRB No. 98-0531 BLA (January 5, 1999)(unpublished), which is incorporated herein by reference.

As the administrative law judge acknowledged, the instant case is a modification request. When modification is requested, the relevant standard set forth by the United States Court of Appeals for the Fourth Circuit in *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993), requires that the administrative law judge determine whether a change in conditions or a mistake of fact has been made, even where no specific allegation has been asserted.[4] Furthermore, in determining whether the requesting party has established modification pursuant to 20 C.F.R. §725.310 (2000), the administrative law judge is obligated to perform an independent assessment of the newly submitted evidence, considered in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish the element or elements of entitlement which defeated entitlement in the prior decision. *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971).

[4]This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was employed in the coal mine industry in the Commonwealth of Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

In the instant Decision and Order, the administrative law judge stated that the matter has been thoroughly litigated and that the new medical evidence strongly confirms the previous judicial determinations. Decision and Order at 1. The administrative law judge then adopted the previous decisions as his own and concluded that claimant failed to establish modification. Decision and Order at 1-2. The administrative law judge did not consider and evaluate the medical evidence and make findings of fact and conclusions of law therefrom, but merely made an assertion concerning the new evidence and adopted the prior decisions, contrary to the Administrative Procedure Act, (APA) 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and U.S.C. §932(a).[5] *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Hall v. Director, OWCP*, 12 BLR 1-80 (1988)(*en banc*); *Robertson v. Alabama By-Products Corp.*, 7 BLR 1-793 (1985). As a result, we vacate the administrative law judge's denial of modification and benefits and remand the case for complete consideration and evaluation of the newly submitted and prior medical evidence and to specifically address whether there has been a change in condition or a mistake in fact of the prior decision. *See Jessee, supra.*

The administrative law judge is further instructed to independently evaluate the evidence of record instead of adopting the prior decisions. The administrative law judge has deprived the parties of their rights by failing to make independent findings. *Hall, supra*. We note that we would not have considered the administrative law judge to have abdicated his authority to analyze the evidence and apply correct law, if he had cited those portions of the decisions which he had adopted, or even included proposed findings, and cited to the record. *Hall, supra*. If a decision cannot withstand scrutiny on the four corners of the document, parties are compelled to rely on a document with which they may be unfamiliar, and which may not be easily accessible. The result of an administrative determination must be a timely and understandable decision available to the parties, addressing relevant issues. *Hall, supra*. On remand, then the administrative law judge must include in his Decision and Order sufficient analysis and findings of fact to indicate that he has weighed all the relevant evidence of record pursuant to the appropriate standards and the basis for his decision therein. *See Ridings v. C & C Coal Co., Inc.*, 6 BLR 1-227 (1983).

[5]The Administrative Procedure Act requires each adjudicatory decision to include a statement of "findings and conclusions, and the reasons or basis therefore, on all material issues of fact, law or discretion presented on the record...." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge