

BRB No. 09-0171 BLA

H.H.)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 08/20/2009
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

H.H., Osgood, Indiana, *pro se*.

Emily Goldberg-Kraft (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank James, 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, without the assistance of counsel, the Decision and Order (08-BLA-5069) of Administrative Law Judge Joseph E. Kane 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). This case involves a claim filed on July 28, 2005. After crediting claimant with at least ten years of coal mine employment,¹ the administrative law judge found that the evidence did not establish the

¹ The record reflects that claimant's coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a response, urging the Board to remand the case to the district director in order to allow him to provide claimant with a complete pulmonary evaluation.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

The Act requires that “[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.” 30 U.S.C. §923(b), as implemented by 20 C.F.R. §§718.101(a), 725.406; *see Hodges v. BethEnergy Mines*, 18 BLR 1-84 (1994).

On the facts of this case, we grant the Director's request to remand this case, given the Director's concession that the Department of Labor failed to provide claimant with a complete pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required by the Act.² 30 U.S.C. §923(b), as implemented by 20 C.F.R. §§718.101(a), 725.406; *Greene v. King James Coal Mining, Inc.*, F.3d , 2009 WL 2253369 (6th Cir. 2009); *Hodges*, 18 BLR at 1-93. Consequently, we vacate the administrative law judge's denial of benefits.

² The Director, Office of Workers' Compensation Programs, concedes that the Department of Labor failed to satisfy its obligation to provide claimant with a complete pulmonary evaluation because Dr. Powell “failed to credibly address the elements of legal pneumoconiosis and disability causation” and because the doctor's opinion “is at odds with the statute and the regulations.” Director's Brief at 4-5.

Accordingly, the administrative law judge's Decision and Order is vacated and the case is remanded to the district director to allow for a complete pulmonary evaluation and for reconsideration of the merits of this claim in light of all of the evidence of record.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge