

BRB No. 02-0581 BLA

CAROLYN STEVENS	)	
(Surviving Daughter, o/b/o HUBERT	)	
STEVENS, deceased miner)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Carolyn Stevens, Whitley City, Kentucky, *pro se*.

Barry H. Joyner (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for 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 (01-BLA-0745) of Administrative Law Judge Rudolf L. Jansen denying benefits on a duplicate 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).<sup>1</sup> In this duplicate claim, the

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<sup>1</sup> 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 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

administrative law judge credited the miner with eleven and one-half years of coal mine employment. Finding that the miner's previous claim was denied because the evidence of record was insufficient to establish that the miner was totally disabled due to pneumoconiosis, the administrative law judge reviewed the evidence submitted in support of the duplicate claim and determined that it failed to establish that the miner was totally disabled due to pneumoconiosis. The administrative law judge, therefore, found that claimant had failed to establish a material change in conditions. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director) has filed a Motion to Remand requesting that the administrative law judge's Decision and Order denying benefits be vacated and that the case be remanded to the district director because of the Director's failure to provide the miner with a complete, credible pulmonary examination as required by the Act. Specifically, the Director acknowledges that none of the medical opinions submitted in support of the miner's duplicate claim credibly address whether the miner's total disability was due to pneumoconiosis. The Director further acknowledges that since the miner is deceased, he can no longer provide the miner with a new, complete, pulmonary examination, but contends that he can have Dr. Patton or some other physician review the evidence of record and address whether the miner was totally disabled at the time of his death and whether the total disability was due to pneumoconiosis.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 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).

The Director concedes that the administrative law judge correctly found that there were no credible medical opinions submitted in support of the duplicate claim. As the Director concedes, the administrative law judge rationally rejected Dr. Patton's opinion of totally disabling pneumoconiosis because he failed to explain his reasoning and Dr. Rodrigue's opinion because he failed to explain the basis of his diagnosis of pneumoconiosis and failed to address whether a moderate obstructive airway disease would have precluded the miner from performing his usual coal mine employment, or whether the miner's airway disease was related to coal mine employment, and found Dr. Khalil's opinion was irrelevant because Dr. Khalil did not address the etiology of the miner's chronic obstructive pulmonary disease or whether the miner was totally disabled by the disease, Claimant's Exhibit 2;

Director's Exhibits 8, 19. 20 C.F.R. §718.204(b), (c); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Accordingly, we grant the Director's motion and remand the case for the Director to fulfill his statutory obligation of providing claimant with an opportunity to substantiate the miner's claim by providing the miner with a complete and credible pulmonary evaluation, as required by Section 413(b) of the Act, 30 U.S.C. §923(b). See 20 C.F.R. §§718.101, 725.405(b); *Hodges, supra*; see *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); accord *Cline v. Director, OWCP*, 917 F.2d 9, 14 BLR 2-102 (8th Cir. 1990); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990)(*en banc*). We, therefore, grant the Director's request to vacate the Decision and Order of the administrative law judge denying benefits and remand the case to the district director for the development of additional medical evidence.

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is vacated and the case is remanded to the district director for proceedings consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge