

BRB No. 09-0715 BLA

JAMES R. VAUGHN)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 05/27/2010
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Ann Marie Scarpino (M. Patricia Smith, Solicitor of Labor; 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 the Decision and Order – Denying Benefits (2007-BLA-05647) of Administrative Law Judge Thomas M. Burke with respect to a claim filed on May 17, 2006, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act). Adjudicating the claim under 20 C.F.R. Part 718, the administrative law judge credited the miner with nineteen years of coal mine employment, based on the parties' stipulation. Addressing the merits of entitlement, the administrative law judge found that claimant established total respiratory disability

pursuant to 20 C.F.R. §718.204(b), but that the medical evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish pneumoconiosis pursuant to Section 718.202(a)(4). The Director, Office of Workers' Compensation Programs (the Director), responds, concurring with claimant and urging the Board to remand the case for the administrative law judge to reconsider the medical opinion evidence, in its entirety, pursuant to Section 718.202(a)(4).¹

By Order dated April 8, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148, which amended the Act with respect to the entitlement criteria for certain claims. Claimant and the Director respond, agreeing that Section 1556 affects this case. They request that this case be remanded to the administrative law judge so that he may consider the claim in light of the amendments to the Act.

Based upon the parties' responses, and our review, we agree that this case is affected by Section 1556. Relevant to this living miner's claim, Section 1556 reinstated the presumption of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that are pending on or after March 23, 2010. Under Section 411(c)(4), if a claimant establishes at least fifteen years of qualifying coal mine employment, and that he has a totally disabling respiratory impairment, there is a rebuttable presumption that he is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4). In this case, claimant filed his claim after January 1, 2005. He was credited with nineteen years of coal mine employment, and established a totally disabling respiratory or pulmonary impairment.² Accordingly, we must remand this case for the

¹ The Director, Office of Workers' Compensation Programs (the Director), states that because the administrative law judge found the opinion of Dr. Kahn to be "cryptic" and "equivocal" on the issue of the cause of claimant's lung disease, the Director failed to meet his statutory obligation to provide a medical opinion that addresses all elements of entitlement. Director's Response Brief at 5. The Director states that a supplemental report is required from Dr. Kahn, definitively addressing the cause of claimant's lung disease and fully explaining his opinion. *Id.*

² The parties have not challenged the administrative law judge's finding of total disability pursuant to 20 C.F.R. §718.204(b), nor his acceptance of the parties' stipulation to nineteen years of coal mine employment.

administrative law judge to consider whether claimant has established invocation of the Section 411(c)(4) presumption.³

Therefore, we vacate the administrative law judge's determination that claimant is not entitled to benefits. If the administrative law judge finds that claimant is entitled to invocation of the presumption that he is totally disabled due to pneumoconiosis at Section 411(c)(4), the administrative law judge must then determine whether the medical evidence rebuts the presumption by showing that claimant does not have pneumoconiosis or that his total disability "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4).

³ Because the presumption alters the required findings of fact and the allocation of the burden of proof, the administrative law judge must allow the parties the opportunity to submit additional, relevant evidence that is consistent with the evidentiary limitations at 20 C.F.R. §725.414. See *Harlan Bell Coal Co. v. Lemar*, 904 F.2d 1042, 1047-50, 14 BLR 2-1, 2-7-11 (6th Cir. 1990)(holding that the employer should be allowed to present additional evidence to the administrative law judge after a change in law); *Tackett v. Benefits Review Board*, 806 F.2d 640, 642, 10 BLR 2-93, 2-95 (6th Cir. 1986)(holding that a remand to the administrative law judge was necessary for the claimant to present additional evidence after a change in law).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is vacated and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge