

BRB No. 05-0530 BLA

JOHN W. CANTRELL, JR.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: 11/30/2005
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order—Denying Benefits of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

John W. Cantrell, Jr., Ringgold, Georgia, *pro se*.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order—Denying Benefits (04-BLA-5460) of Administrative Law Judge Edward Terhune Miller on a subsequent 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).¹ The administrative law judge credited claimant with seven years and seven months of coal mine employment and found that the newly submitted evidence established the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1), and thus demonstrated a change in

¹ Claimant's first claim was denied on May 4, 1983 because claimant failed to establish any element of entitlement. Director's Exhibit 1. Claimant filed this subsequent claim on November 21, 2002. Director's Exhibit 3.

an applicable condition of entitlement as required by 20 C.F.R. §725.309(d). The administrative law judge, however, found that the evidence failed to establish either that claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(c), or that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. In response, the Director, Office of Workers' Compensation Programs (the Director), accepts the administrative law judge's finding that the existence of pneumoconiosis was established and concedes that claimant has a totally disabling respiratory or pulmonary impairment. The Director moves that this case be remanded to the district director for further development of the medical evidence. Specifically, the Director states that he failed to meet his statutory duty to provide claimant with a complete pulmonary evaluation to substantiate his claim. The Director seeks a remand so that he may provide claimant "with a medical opinion that specifically and credibly addresses the cause of claimant's respiratory disease and the cause of his disabling respiratory impairment," so that "claimant's eligibility for benefits may be properly assessed." Director's Motion to Remand at 7-8.

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 Co.*, 12 BLR 1-176, 1-177 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718, claimant must establish that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

The Director concedes both that claimant has pneumoconiosis and that he is totally disabled. However, the Director states that the record contains no medical opinion from the Department of Labor addressing the cause of claimant's pneumoconiosis or the cause of his total disability. As the Director indicates, Dr. Enjeti, who examined claimant on February 13, 2003 on behalf of the Department of Labor, responded to the question

regarding claimant's ability to perform his usual coal mine employment by merely noting that claimant "retired 1975." Director's Exhibit 12 at 4. Thus, Dr. Enjeti did not address claimant's ability from a respiratory standpoint to perform his coal mine work, and thus, whether any restriction on claimant's respiratory work capability is due to pneumoconiosis. See *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994)(observing that the Director may fail to meet his obligation where his physician fails to address a contested element of entitlement). Additionally, since Dr. Enjeti did not diagnose pneumoconiosis, an issue the Director now concedes, Dr. Enjeti did not address whether claimant's pneumoconiosis arose out of coal mine employment. See 20 C.F.R. §718.203(c); *Hodges*, 18 BLR at 1-88 n.3. Accordingly, the Director requests a remand "to the district director to obtain a supplemental opinion to remedy the flaws in Dr. Enjeti's opinion" Director's Motion to Remand at 8.

In view of the Director's concession that he did not meet his obligation to provide claimant with a complete pulmonary evaluation, we vacate the administrative law judge's Decision and Order-Denying Benefits and remand this case to the district director to provide claimant with a complete pulmonary evaluation, and for reconsideration of this claim in light of the new evidence developed. See 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.406; *Hodges*, 18 BLR at 1-90; *Petry v. Director, OWCP*, 14 BLR 1-98 (1990)(*en banc*). In remanding this case, we note that substantial evidence in the current record supports the administrative law judge's finding that claimant established seven years and seven months of coal mine employment, Director's Exhibits 4, 6, 7, 10; Hearing Tr. at 24-42, 51-55, but we also note the Director's position that, on remand, claimant has the right to submit additional evidence. Director's Motion to Remand at 8 n.3; see 20 C.F.R. §718.203(b),(c).

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated and the case is remanded to the district director for further proceedings consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge