

BRB No. 03-0176 BLA

DONALD G. POND	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS=	)	DATE ISSUED: 09/17/2003
	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits and Decision and Order on Reconsideration - Rejection of Claim of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Donald G. Pond, Monkey Island, Oklahoma, *pro se*.

Rita A. Roppolo (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 the Director, Office of Workers= Compensation Programs, United States Department of Labor.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order B Denying Benefits and Decision and Order on Reconsideration - Rejection of Claim (00-BLA-532) of Administrative Law Judge Edward Terhune Miller rendered 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).<sup>1</sup> 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

administrative law judge found that claimant established eight years of coal mine employment and the existence of a totally disabling respiratory impairment, but failed to establish the existence of pneumoconiosis, and thereby, that pneumoconiosis arose out of coal mine employment or that claimant=s total disability was due to pneumoconiosis. Decision and Order at 6-7. Accordingly, benefits were denied. On reconsideration, the administrative law judge again concluded that the evidence was insufficient to establish the existence of pneumoconiosis and total disability due to pneumoconiosis, and reaffirmed the denial of benefits.

On appeal, claimant generally contends that he is entitled to benefits. The Director, Office of Workers= Compensation Programs (the Director), responds, urging that the case be vacated and remanded to the district director to obtain clarification and elaboration of the opinion of Dr. Odgers in order to fulfill the Director=s obligation to provide claimant with a complete pulmonary evaluation pursuant to 30 U.S.C. '932(b). Specifically, the Director contends that Dr. Odgers did not sufficiently explain his opinion concerning the cause of claimant=s disabling respiratory impairment.<sup>2</sup>

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 1-84 (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 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 pursuant to 20 C.F.R. Part 718, claimant must prove the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. ' '718.3, 718.202, 718.203, 718.204. 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*).

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found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>2</sup> The Director concedes the existence of a total disabling respiratory impairment. Director=s Motion to Remand at 4.

Since the Director concedes that claimant has not been provided with a complete, credible, pulmonary evaluation pursuant to 30 U.S.C. '932(b); 20 C.F.R. '725.406(a) (2000), we vacate the administrative law judge=s denial of benefits and remand the case for the Director to fulfill his statutory obligation of providing claimant a complete, credible, pulmonary evaluation by either obtaining clarification and elaboration of Dr. Odgers=s opinion or providing claimant with a new pulmonary evaluation to address the essential elements of entitlement. 20 C.F.R. ' '718.202(a)(4); 718.203; 718.204(c). 30 U.S.C. '923(b); *Newman v. Director, OWCP*, 745 F.2d 1162, 1162, 7 BLR 2-25 (8th Cir. 1984) accord *Cline v. Director, OWCP*, 972 F.2d 234, 14 BLR 2-102 (8th Cir. 1992); *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *Petry v. Director, OWCP*, 14 BLR 1-98, 1-100 (1990)(*en banc*); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990)(*en banc*).

Accordingly, the administrative law judge=s Decision and Order - Denying Benefits and Decision and Order on Reconsideration - Rejection of Claim is vacated and the case is remanded to the district director for clarification and elaboration of Dr. Odgers= opinion or for a new, complete, credible, pulmonary evaluation addressing the requisite elements of entitlement.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge