

ROBERT O. TENNEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GAMBLE COAL, INCORPORATED	)	
	)	
Employer	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Reid C. Tait, Administrative Law Judge, United States Department of Labor.

Robert O. Tenney, Tallmansville, West Virginia, *pro se*.

Sarah M. Hurley (Thomas S. Williamson, Jr., Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without legal representation, appeals the Decision and Order (88-BLA-2782) of Administrative Law Judge Reid C. Tait 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). The administrative law judge reviewed this claim pursuant to the provisions at 20 C.F.R. Part 718, and credited claimant with at least ten years of qualifying coal mine employment. The administrative law judge accepted the stipulation of the parties that claimant had

pneumoconiosis, and found that claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), and that claimant established total disability pursuant to 20 C.F.R. §718.204(c)(2). The administrative law judge further found, however, that the evidence was insufficient to establish that claimant's disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied. Claimant appeals, generally challenging the administrative law judge's denial of benefits. Employer has not participated in this appeal, and the Director, Office of Workers' Compensation Programs, responds,<sup>1</sup> urging a remand to the district director for further development of the evidence.<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. *McFall v. Jewell Ridge Coal Corp.*, 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 on Remand 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In finding that the evidence was insufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b), the administrative law judge accurately determined that the only medical opinion of record which addressed both the extent and cause of claimant's impairment was that of employer's physician, Dr. Bellotte, who found claimant totally disabled from cardiac disease and osteoarthritis, but stated that claimant's pneumoconiosis did not cause any significant pulmonary functional impairment. Decision and Order at 3; Director's Exhibits 21, 22. The Director correctly notes, however, that Dr.

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<sup>1</sup> The Director has filed a Motion to Remand, which the Board accepts as her response brief herein.

<sup>2</sup> The administrative law judge's findings pursuant to Sections 718.203(b) and 718.204(c)(2), and with regard to the length of coal mine employment, are not adverse to claimant and are affirmed as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Scattaregia, who examined claimant on behalf of the Department of Labor, did not address the issues of total disability and causation thereof. See Director's Exhibit 9. In these circumstances, the Department of Labor has not fulfilled its responsibility of providing claimant with a complete, credible pulmonary evaluation regarding every element of entitlement. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); see *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990) (*en banc*). Consequently, we vacate the administrative law judge's findings pursuant to Section 718.204, and remand this case for the district director to either obtain a supplemental opinion from Dr. Scattaregia or to schedule claimant for a complete pulmonary evaluation as required by the Act and regulations.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part, vacated in part, and this case is remanded for further development consistent with this opinion.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge