

BRB No. 97-1282 BLA

GEORGE M. MILLER))	
Claimant-Petitioner))	
v.))	
MARTINKA COAL COMPANY))	DATE ISSUED:
Employer-Respondent))	
DIRECTOR, OFFICE OF WORKERS'))	
COMPENSATION PROGRAMS, UNITED))	
STATES DEPARTMENT OF LABOR))	
Respondent))	DECISION and ORDER

Appeal of the Decision and Order of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

James Hook, Waynesburg, Pennsylvania, for claimant.

Helen H. Cox (Marvin Krislov, Deputy Solicitor for National Operations; 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: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (96-BLA-1068) of Administrative Law Judge Gerald M. Tierney 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 found that claimant established twenty-seven and one-half years of qualifying coal mine employment and failed to establish the

¹Claimant is George M. Miller, the miner, who filed a claim for benefits on May 30, 1995. Director's Exhibit 1.

existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied. On appeal, claimant contends that the Department of Labor failed to provide him with a complete, credible pulmonary examination sufficient to substantiate the claim. Employer has not responded to this appeal. The Director, Office of Workers' Compensation Programs (the Director), responds urging the Board to remand the claim to the district director for claimant to be provided with a complete medical evaluation.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act 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 pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

Claimant's only contention on appeal is that, because the administrative law judge found Dr. Jaworski's opinion regarding causation to be equivocal and not well explained, this opinion does not constitute a complete, credible pulmonary examination. Claimant's Brief at 3-4. Dr. Jaworski, in an opinion dated July 13, 1995, diagnosed severe chronic obstructive lung disease with significant bronchoreversibility present based on results of pulmonary function studies and physical examination, atrial arrhythmia by EKG, and mild pleural thickening right chest wall, right costophrenic angle by chest x-ray. Dr. Jaworski indicated that the etiology of claimant's chronic obstructive pulmonary disease is bronchial asthma with possible contribution of coal dust exposure. He stated that the etiology of the remaining two conditions is unknown. He then opined that claimant's respiratory impairment would be classified as severe and that this degree of impairment could prevent claimant from performing certain aspects of his last coal mine employment. Director's Exhibit 16. Concerning Dr. Jaworski's opinion, the administrative law judge found: "At the outset, I give little weight to Dr. Jaworski's opinion on the causation issue. It is equivocal. He acknowledges coal dust exposure as a possible contributor but does not definitively rule it in or out or provide any additional explanation." Decision and Order at 4.

In order to provide claimant with a complete pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim as required by the Act and regulations, see 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *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), the Director must provide a credible medical opinion that addresses all of the elements of entitlement. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). Where the Director has conceded that he has failed to provide claimant with a complete and credible pulmonary evaluation, complete medical opinions submitted by employer are insufficient to meet the Director's statutory duty of providing claimant with an "an opportunity to substantiate his claim." *Hodges, supra*.

In the instant case, because the administrative law judge determined that Dr. Jaworski's opinion regarding the etiology of claimant's chronic obstructive pulmonary disease is equivocal, this opinion would not be sufficient to establish that claimant's bronchial asthma was due to coal dust exposure and, thus, would not be sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Because this opinion does not adequately address the issue of whether claimant has pneumoconiosis, this opinion does not constitute a complete credible pulmonary evaluation. *Newman, supra; Hodges, supra; Pettry, supra*. Thus, we vacate the administrative law judge's Decision and Order denying benefits and remand the claim to the district director for a complete credible medical evaluation.

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated and the case is remanded to the district director for the development of additional evidence and for reconsideration of the merits of this claim in light of the new evidence.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge