

BRB No. 97-0836 BLA

VINCENT MALONEY)
)
 Claimant-Petitioner)
 v.) DATE ISSUED:
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Lynne G. Bressi (Law Offices of Charles A. Bressi, Jr.), Pottsville, Pennsylvania, for claimant.

Dorothy L. Page (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor of Labor; 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 BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-1157) of Administrative Law Judge Ralph A. Romano denying benefits on a duplicate 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. Claimant filed his duplicate claim on June 2, 1994.¹ The administrative law judge initially considered whether claimant established a material change in conditions pursuant to 20 C.F.R. §725.309(d). The administrative law judge specifically found that the newly submitted x-ray evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge, however, determined

¹ Claimant originally filed a claim on October 6, 1980, which was denied by the district director on March 31, 1981. Director's Exhibit (DX) 33. A second claim was filed by claimant on July 31, 1991. DX 34. The district director denied the second claim on July 7, 1992. *Id.*

that claimant is not totally disabled pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied. Claimant appeals, challenging the administrative law judge's findings pursuant to 20 C.F.R. §718.204(c)(1) and (c)(4). The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion for Remand, arguing that the administrative law judge erred in his consideration of the evidence at Section 718.204(c).²

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and consistent with applicable law, they are binding upon this Board and must be affirmed. 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).

On appeal, claimant and the Director argue that the administrative law judge erred in his consideration of the evidence at Section 718.204(c). We agree. Under 20 C.F.R. §718.204(c)(1), the administrative law judge found that there were five pulmonary function studies conducted since the prior denial. Of those five studies, the administrative law judge noted that the pulmonary function tests performed by Dr Kraynak on September 18, 1996 and November 13, 1996 are qualifying for total disability. D&O at 8. In weighing the conflicting pulmonary function study evidence, the administrative law judge discredited the September 18, 1996 study based on the invalidation report of Dr. Sahillioglu. *Id.* The administrative law judge, however, erred by not explaining why he relied on Dr. Sahillioglu's opinion over Dr. Kraynak's opinion as to the validity of the September 18, 1996 test.³ See *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). We, therefore, vacate the administrative law judge's finding that the pulmonary function study evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1). Additionally, inasmuch as the administrative law judge's analysis of the pulmonary function study evidence influenced his decision to discredit Dr. Kraynak's opinion that claimant is totally disabled, we vacate the administrative law judge's finding at 20 C.F.R. §718.204(c)(4). Consequently, we vacate the administrative law judge's denial of benefits.

² We affirm the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1) and 718.204(c)(2) and (c)(3) as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order (D&O) at 7, 8-9.

³ Dr. Sahillioglu invalidated the September 18, 1996 pulmonary function study, noting that the test did not record the patient's weight and that there is "no demonstration of inspiratory effort." DX 41.

On remand, we direct the administrative law judge to reconsider whether claimant has established total disability pursuant to 20 C.F.R. §718.204(c). See *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986). If necessary, the administrative law judge must also determine whether claimant established that pneumoconiosis is a substantial contributor to his respiratory or pulmonary disability at 20 C.F.R. §718.204(b). See *Bonessa v. United States Steel Corp.*, 884 F. 2d 176, 13 BLR 2-23 (3d Cir. 1989).

Finally, we note that a finding of the existence of pneumoconiosis would be sufficient, based on the facts of this case, see Decision and Order at 6-7, to establish a material change in conditions under 20 C.F.R. §725.309(d). See *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-76 (3d Cir. 1995). However, the administrative law judge limited his analysis of the issue of the existence of pneumoconiosis to the x-ray evidence at Section 718.202(a)(1). On remand, the administrative law judge is directed to consider whether claimant has established the existence of pneumoconiosis based on all of the relevant evidence at 20 C.F.R. §718.202(a)(1)-(4). See *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge