

BRB No. 01-0444 BLA

CHARLES B. MATUKAITIS, SR.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: _____
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER
Respondent)	

Appeal of the Decision and Order of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Brian Butler (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for claimant.

Sarah M. Hurley (Eugene Scalia, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (99-BLA-1228) of Administrative Law

¹Claimant is Charles B. Matukaitis, Sr., the miner, who filed his present claim for benefits on March 26, 1999. Director's Exhibit 1. The miner's first claim for benefits, filed on August 30, 1982, was finally denied by Administrative Law Judge Thomas Schneider on March 4, 1987 because claimant failed to establish the existence of pneumoconiosis. Claimant's Exhibits H, E. The miner's second claim, filed on February 13, 1989, was finally denied by Administrative Law Judge Ainsworth H. Brown on April 22, 1992 because claimant again failed to establish the existence of pneumoconiosis. Claimant's Exhibits F, G.

As was noted by the administrative law judge, the record relating to claimant's first

Judge Robert D. Kaplan denying benefits on a miner's 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).² Initially, the administrative law judge credited claimant with three years of coal mine employment pursuant to the parties' stipulation, 2000 Hearing Transcript at 24-25. Decision and Order at 3. The administrative law judge found that claimant established a material change in conditions pursuant to 20 C.F.R. §725.309(d) (2000) based on employer's concession to total respiratory disability, 2000 Hearing Transcript at 25.

and second claims was either lost or destroyed, Director's Exhibit 14. Decision and Order at 2 n.1. The record has been reconstructed with copies of documents submitted by claimant at Claimant's Exhibits A-G. Because the record has been reconstructed, there are several medical exhibits (four x-ray interpretations of the December 18, 1990 and April 15, 1991 x-rays and one medical report from Dr. Cander) that are missing from the record. However, the administrative law judge considered these documents based on Judge Schneider's and Judge Brown's references in their decisions to these exhibits. Decision and Order at 7 n.5, 8 n.7. The x-ray readings of the December 18, 1990 and April 15, 1991 x-rays were also noted in claimant's prehearing report. Neither the Director, Office of Workers' Compensation Programs (the Director), nor claimant has challenged the administrative law judge's consideration in his Decision and Order of these exhibits. Specifically, the Director noted in a letter to the administrative law judge that while he has no objection to the admission of Claimant's Exhibits A-G, the Director wished to note for the record that these documents may not represent the entire record of claimant's previous federal black lung claims.

²The 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 found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those arguments regarding the impact of the challenged regulations made by the Director in his Motion to Remand.

Decision and Order at 4. Applying the regulations pursuant to 20 C.F.R. Part 718, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(c) (2000). Decision and Order at 7-8, 10-14. The administrative law judge also found that claimant failed to establish that his total respiratory disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). Decision and Order at 14. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in failing to find that claimant has established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (a)(4) (2000). Claimant's Brief at 6-11. Claimant additionally asserts that the administrative law judge erred in failing to find that Dr. Kline's opinion is sufficient to establish pneumoconiosis arising out of coal mine employment and total disability due to pneumoconiosis. Claimant's Brief at 11-13. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand, asserting that this case should be remanded for the development of a complete, credible pulmonary evaluation inasmuch as the record does not contain a credible medical opinion addressing the cause of claimant's totally disabling respiratory impairment.³ Director's Brief at 3-6.

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).

³We affirm the administrative law judge's findings regarding the length of coal mine employment and a material change in conditions as they are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

We grant the Director's request to remand this case, given the Director's concession that the Department of Labor failed to provide the miner with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim, as required by the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101 (2000); 20 C.F.R. §§718.401, 725.405(b); *see Hall v. Director, OWCP*, 14 BLR 1-51, 1-54 (1990)(*en banc*); *see also Pettry v. Director, OWCP*, 14 BLR 1-98 (1990)(*en banc*); *see generally Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984). Consequently, we vacate the administrative law judge's denial of benefits.⁴

⁴While we decline to address all of claimant's specific arguments in view of our disposition of this case, in the interest of judicial economy we will address claimant's assertion regarding Dr. Sahillioglu's 1999 report. Claimant contends that Dr. Sahillioglu's 1999 report should not be accorded any weight inasmuch as it "is at odds with the [s]tipulation of the parties that the miner is totally disabled." Claimant's Brief at 8. In light of claimant's assertion, we instruct the administrative law judge on remand to consider what effect, if any, the Director's stipulation of total respiratory disability has on the credibility of Dr. Sahillioglu's 1999 report in which this physician found that claimant does not have a clinically significant respiratory impairment that would prevent him from performing his usual coal mine employment, Director's Exhibit 7.

Accordingly, the administrative law judge's Decision and Order is affirmed in part and vacated in part, and the case is remanded to the district director to allow for a complete pulmonary evaluation, at no expense to claimant, and for reconsideration of the merits of this claim in light of our Decision and Order and all the evidence of record.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge