

BRB No. 01-0815 BLA

GLEN R. JOHNSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ELRO COAL COMPANY,)	DATE ISSUED:
INCORPORATED)	
)	
and)	
)	
VIRGINIA INDEPENDENT COAL)	
OPERATORS GROUP SELF-INSURANCE)	
ASSOCIATION)	
)	
Employer/Carrier-Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS’)	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Glen R. Johnson, St. Charles, Virginia, *pro se*.

Jennifer U. Toth (Eugene Scalia, 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,¹ appeals the Decision and Order Denying

Benefits (00-BLA-0731) of Administrative Law Judge Mollie W. Neal 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.* (the Act).² Noting that the previous claim was denied because claimant failed to establish a totally disabling respiratory impairment, the administrative law judge found that a material change in conditions was established because the blood gas study and medical opinion evidence not established a totally disabling respiratory impairment. Thus finding that total disability and a material change in conditions was established, the administrative law judge conducted a *de novo* review of the case to determine whether the other elements of entitlement were established. The administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), but failed to establish that his total respiratory disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer, Elro Coal Company, has not responded to this appeal on the merits. The Director, Office of Workers' Compensation Programs (the Director) responds, filing a Motion to Remand the case to the district director because he failed to provide claimant with a complete, credible pulmonary examination as required by the Act. Therefore, the Director requests that the Board vacate the Decision and Order of the administrative law judge denying benefits and remand the case to the district director for further development of the

medical evidence.³

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 Co.*, 12 BLR 1-176 (1989). 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).

The Director contends that, inasmuch as the administrative law judge correctly found the opinion of Dr. Paranthaman, who was requested to examine claimant on behalf of the Department of Labor, not probative on the issue of disability causation because Dr. Paranthaman failed to assess the relationship, if any, between claimant's pneumoconiosis and his totally disabling respiratory impairment in accordance with Section 718.204(c)(1), *see* Decision and Order at 14-15; Director's Exhibit 9, the Director failed to fulfill his statutory obligation of providing claimant with an opportunity to substantiate his claim by providing claimant with a complete and credible pulmonary evaluation, as required by Section 413(b) of the Act, 30 U.S.C. §923(b). *See* 20 C.F.R. §§718.101, 725.405(b).

It is well established that the Department of Labor (DOL) has a statutory duty to arrange and pay for a miner's complete pulmonary examination pursuant to 30 U.S.C. §923(b). *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *see Newman v. Director*,

OWCP, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *accord Cline v. Director, OWCP*, 917 F.2d 9, 14 BLR 2-102 (8th Cir. 1990). Likewise, the Board has held that DOL must provide claimant with a complete, credible pulmonary examination sufficient to constitute an opportunity to substantiate the claim, as required by the Act. *See Pettry v. Director, OWCP*, 14 BLR 1-98 (1990); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990) (*en banc*). As the Director correctly avers, the administrative law judge found that while Dr. Paranthaman opined that claimant was totally disabled based upon the qualifying arterial blood gas studies, he did not provide an opinion with respect to causation. Decision and Order at 15. Thus, inasmuch as Dr. Paranthaman did not render a credible examination and opinion sufficient to substantiate the miner's claim, we agree with the Director that he has failed to provide claimant with a complete pulmonary examination as required by Section 413(b) of the Act, 30 U.S.C. §923(b). *See* 20 C.F.R. §§718.101, 725.405(b). Hence, we grant the Director's request, vacate the Decision and Order of the administrative law judge in part, and remand this case to the district director to provide claimant with a complete, credible, pulmonary evaluation addressing the issue of disability causation, *see* 20 C.F.R. §718.204(c), in accordance with Section 413(b) of the Act. *See Pettry, supra; Hall, supra.*

Moreover, the administrative law judge's finding that even though the x-ray evidence showed masses in claimant's lungs which met the size requirements for complicated pneumoconiosis, complicated pneumoconiosis was not established because no physician of record diagnosed complicated pneumoconiosis, does not comply with the teachings of the United States Court of Appeals for the Fourth Circuit within whose jurisdiction this case

arises, in *Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000) and *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, BLR (4th Cir. 1999). The administrative law judge's finding that complicated pneumoconiosis was not established is therefore vacated and the case is remanded for consideration of those teachings.

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed in part, vacated in part, and the case is remanded to the district director for proceedings consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge