

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-2404

Frankie J. Zemo,

Petitioner,

v.

Director, Office of Workers'
Compensation Programs, United
States Department of Labor,

Respondent.

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* Petition for Review of an Order
* of the Benefits Review Board,
* United States Department of Labor.
* [UNPUBLISHED]
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Submitted: February 15, 2001

Filed: March 14, 2001

Before WOLLMAN, Chief Judge, BRIGHT, and MORRIS SHEPPARD ARNOLD,
Circuit Judges.

PER CURIAM.

Frankie J. Zemo worked at a coal mine in Iowa in the early 1950s and now suffers from several ailments, including pneumoconiosis. On January 15, 1992, Zemo applied for benefits under the Black Lung Benefits Act, 30 U.S.C. §§ 901 *et seq.*, which provides for benefits payments to coal miners totally disabled by pneumoconiosis. *Id.* § 901(a). An administrative law judge (ALJ) denied the application, and Zemo sought review at the Benefits Review Board (Board) of the

Department of Labor (Department). On December 17, 1999, the Board upheld the denial, and Zemo filed this petition for review.

The ALJ held, and the Board agreed, that Zemo could not meet the relevant test of 20 C.F.R. § 718.204(c)(4) (1999), which provides for the payment of benefits when a physician, exercising “reasoned medical judgment,” concludes that a claimant is prevented from coal mine work or comparable, gainful employment because of his respiratory or pulmonary condition. The record contains the opinions of four physicians, three of which were, for various reasons, insufficient to support an award.

The fourth physician’s opinion was generated from a statutorily required complete pulmonary evaluation. Zemo is entitled to such an examination funded and arranged by the Department in order to provide him with “an opportunity to substantiate his . . . claim.” 30 U.S.C. § 923(b); see 20 C.F.R. §§ 718.101, 725.405, 725.406; Oliver v. Director, OWCP, 993 F.2d 1353, 1354 (8th Cir. 1993) (per curiam); Cline v. Director, OWCP, 917 F.2d 9, 11 (8th Cir. 1990). This doctor’s opinion, however, was discredited by the ALJ and the Board as insufficiently reasoned, and thus the record thus lacks the necessary evaluation. See Oliver, 993 F.2d at 1354 (upholding Board decision because record contained one credible pulmonary evaluation). The Board agrees that a remand is proper so that Zemo may obtain the complete pulmonary evaluation he is entitled to under the law. Accordingly, we vacate the Board’s denial of benefits and remand the case for further proceedings.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.