BRB No. 05-0395 BLA

WALTER W. YADLOSKY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 03/31/2006
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

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

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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: DOLDER, Chief Administrative Appeals Judge, SMITH, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (02-BLA-0442) of Administrative Law Judge Ralph A. Romano denying benefits with respect to 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). This case has been before the Board several times. The Board set forth this claim's full procedural history in its most recent Decision and Order. *Yadlosky v. Director, OWCP*, BRB No. 03-0744 BLA (Jul. 14, 2004)(unpub.), slip op. at 1 n.1. In its most recent Decision and Order, the Board affirmed the administrative law judge's determination that the prior denial of benefits did not contain a mistake in a determination of fact under 20 C.F.R. §725.310 (2000) and that the newly submitted evidence was insufficient to establish total disability pursuant to 20

C.F.R. §718.204(b)(2)(i)-(iii).[1] *Yadlosky*, slip op. at 3-7. The Board also held, however, that the administrative law judge did not adequately address the opinions of Drs. Matthew and Raymond Kraynak and Dr. Green pursuant to Section 718.204(b)(2)(iv) and he neglected to weigh the opinion of Dr. Prince. *Yadlosky*, slip op. at 7-9. Accordingly, the Board vacated the administrative law judge's determination that claimant failed to establish a change in conditions and instructed the administrative law judge to consider these opinions on remand. *Id*.

On remand, the administrative law judge determined again that the opinion in which Dr. Green indicated that claimant is not totally disabled was entitled to greatest weight based upon Dr. Green's qualifications and the extent to which his opinion was supported by the evidence of record. Benefits were denied and the current appeal followed.

Claimant initially reiterates several of arguments raised in his prior appeal before the Board and which the Board rejected. Claimant also alleges that the administrative law judge did not properly weigh the medical opinion evidence relevant to the issue of total disability. The Director, Office of Workers' Compensation Programs (the Director), has responded and urges affirmance of the administrative law judge's finding that the opinions of Drs. Prince and Matthew Kraynak do not support a finding of total disability under Section 718.204(b)(iv). The Director further maintains, however, that the administrative law judge did not provide valid reasons for crediting the opinion in which Dr. Green stated that claimant can perform his usual coal mine employment, or for discrediting the contrary opinion of Dr. Raymond Kraynak.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant first argues that the administrative law judge did not apply the correct analysis to claimant's modification request and that the administrative law judge erred in finding that total disability was not established under Section 718.204(b)(2)(i). These contentions were raised in claimant's prior appeal and were rejected by the Board. Because claimant has not identified any meritorious arguments in support of altering the Board's prior disposition of these issues, the Board's holdings now constitute the law of

[1] The amended version of 20 C.F.R. §725.310 does not apply in this case in which the claim was pending on January 19, 2001, the effective date of the amended regulations. 20 C.F.R. §725.2(c).

the case and will not be disturbed. *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

With respect to the administrative law judge's weighing of the medical opinions under Section 718.204(b)(2)(iv), claimant contends that the administrative law judge erred in according little weight to the opinion in which Dr. Prince stated that claimant cannot perform his last coal mine employment.[2] This contention is without merit. Contrary to claimant's allegation of error, the administrative law judge did not rely solely upon the fact that Dr. Prince did not examine claimant. Rather, the administrative law judge rationally determined that Dr. Prince's report was not well-documented, as the doctor referred to a single pulmonary function study (PFS) in support of his opinion and did not have the opportunity to review the nonqualifying objective studies of record or any other pertinent information regarding claimant's physical condition. Decision and Order at 5; Claimant's Exhibit 13; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

Claimant also argues that the administrative law judge erred in discrediting the opinions of Drs. Matthew and Raymond Kraynak on the ground that they relied upon the June 12, 2002 PFS that the administrative law judge determined was invalid. Claimant also alleges that the administrative law judge ignored their status as treating physicians. The Director asserts that the Board should affirm the administrative law judge's decision to accord little weight to Dr. M. Kraynak's opinion because claimant has failed to allege a specific error in the administrative law judge's finding. The Director also maintains, however, that the administrative law judge's discrediting of Dr. R. Kraynak's opinion was improper, as the administrative law judge did not adequately address the sufficiency of the additional bases for Dr. R. Kraynak's opinion and did not adequately explain his findings.

Contrary to the Director's assertion, we hold that claimant has raised specific meritorious allegations of error that apply to the administrative law judge's consideration of the opinions of both doctors. Claimant is correct in maintaining that in finding that "their medical reports fail to adequately support their conclusions, and therefore, their opinions are not well-documented or well-reasoned," the administrative law judge did not address the fact that both Dr. R. Kraynak and Dr. M. Kraynak reviewed Dr. Green's medical report and stated that the data obtained by Dr. Green, including a valid, qualifying PFS and a nonqualifying blood gas study, supported a finding of total

[2] Dr. Prince submitted a letter in which he reviewed the results of the November 5, 2002 pulmonary function study administered on behalf of Dr. Green. Claimant's Exhibit 13. Dr. Prince concluded that the study was valid and showed "inadequate lung function to support [claimant's] last coal mine employment as an underground miner." *Id.*

disability. Decision and Order at 4; Director's Exhibit 117; Claimant's Exhibits 9, 10, 14. As noted by both claimant and the Director, the administrative law judge also did not discuss Dr. R. Kraynak's deposition testimony regarding how both the data that he obtained and the data set forth in Dr. Green's medical report support the diagnosis of a totally disabling impairment. Claimant's Exhibit 9 at 7, 9-10. In addition, the administrative law judge did not consider Dr. R. Kraynak's statement that regardless of the PFS evidence of record, he would still find claimant disabled from performing his usual coal mine work. *Id*.

We must vacate, therefore, the administrative law judge's discrediting of the opinions of Drs. M. and R. Kraynak and his determination that claimant has not established total disability pursuant to Section 718.204(b)(2)(iv). *Carson v. Westmoreland Coal Co.*, 19 BLR 1-18 (1994); *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). On remand, the administrative law judge must reconsider whether these opinions, as expressed in the physicians' written reports and Dr. R. Kraynak's deposition, are sufficient to establish that claimant is suffering from a totally disabling respiratory or pulmonary impairment as defined in Section 718.204(b)(1). Claimant's Exhibits 9, 10, 14.

Regarding Dr. Green's opinion, that claimant is not totally disabled, the Board instructed the administrative law judge to determine whether Dr. Green "was sufficiently aware of the exertional requirements of claimant's last coal mine employment." *Yadlosky*, slip op. at 9. On remand, the administrative law judge gave greatest weight to Dr. Green's opinion based upon his status as a Board-certified pulmonologist and because Dr. Green adequately described the severity of claimant's impairment such that the administrative law judge could infer that claimant is not totally disabled.[3] Decision and Order at 5-6; Director's Exhibit 117. The administrative law judge also indicated with respect to the Board's remand instruction that "I surmise that Dr. Green was aware of the nature of claimant's last coal mine employment given his extensive pulmonary experience." Decision and Order at 6 n.2.

[3] Dr. Green performed an examination of claimant at the request of the Department of Labor and obtained a qualifying pulmonary function study, which he described as revealing moderate airflow obstruction. Director's Exhibit 117. When asked to assess the severity of claimant's impairment, Dr. Green indicated that claimant would be "able to perform his last coal mine job…without limitation." *Id*. In the section of the examination form regarding claimant's history of coal mine employment, Dr. Green noted that claimant "mined coal, worked in deep mines." *Id*.

Both claimant and the Director contend that the administrative law judge did not adequately explain his finding that Dr. Green's opinion supports a determination that claimant is not totally disabled pursuant to Section 718.204(b)(2)(iv). This contention has merit. Although the administrative law judge stated correctly that in his role as fact-finder, he could assess whether the moderate obstructive impairment diagnosed by Dr. Green would prevent claimant from performing his usual coal mine work, the administrative law judge did not identify the exertional requirements of this work nor did he explain how he determined that claimant is not totally disabled.[4] Decision and Order at 6. Thus, the administrative law judge's determination must be vacated, as it does not comport with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), which requires the administrative law judge to provide a rationale for his findings. *See Mazgaj v. Valley Camp Coal Corp.*, 9 BLR 1-201 (1986); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon.*, 9 BLR 1-104 (1986). The administrative law judge's statement that he surmised that Dr. Green knew the exertional requirements of claimant's usual coal mine work based upon his experience as a pulmonologist also does not accord with the APA, as the administrative law judge did not base his finding of fact upon identifiable evidence in the record.[5] *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

On remand, the administrative law judge must reconsider the opinions of Drs. Green, M. Kraynak, and R. Kraynak, as set forth in their written reports and the deposition testimony of Dr. R. Kraynak. Director's Exhibit 117; Claimant's Exhibits 9, 10, 14. In assessing the relative weight to which each physician's assessment of total disability is entitled, the administrative law judge may take into account Dr. Green's status as a Board-certified pulmonologist and the treating physician status of the Drs. Kraynak. 20 C.F.R. §718.104(d); *McMath*, 12 BLR at 1-8; *Dillon*, 11 BLR at 1-114. The administrative law judge cannot, however, rely solely upon either of these factors in resolving the conflict between the physicians on the issue of total disability, without first

[4] Claimant indicated at the hearing conducted on September 14, 1999, that his last work in the mines involved heavy manual labor. Director's Exhibit 52 at 17-22.

[5] At the time that Dr. Green examined claimant, claimant was employed as a laborer at Lynn Ladder. Director's Exhibit 117. The administrative law judge implied that Dr. Green's reference to the duties claimant performed on this job provided support for Dr. Green's determination that claimant is not totally disabled. Decision and Order at 5. Claimant's non-coal mine employment work at Lynn Ladder is not relevant in assessing claimant's ability to perform his usual coal mine work, however, unless the administrative law judge determines that it constituted comparable and gainful employment pursuant to 20 C.F.R. §718.204(b)(1)(ii).

determining that the opinion in question is reasoned and documented. The administrative law judge must set forth his findings in detail, including the underlying rationale.

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed in part and vacated in part and this case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge