BRB No. 00-0190 BLA

SHERMAN MATNEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED:
	)	
CLINCHFIELD COAL COMPANY	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order After Second Remand of Frederick D. Neusner, Administrative Law Judge, United States Department of Labor.

Bobby Steve Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order After Second Remand (95-BLA-1472) of Administrative Law Judge Frederick D. Neusner awarding benefits on 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 is before the Board for the third time. Claimant filed his first application for black lung benefits on April 3, 1980, which was subsequently denied by the district director. Claimant filed his second claim on March 30, 1992, which was denied by the district

director on February 11, 1993, on the ground that claimant failed to establish the existence of pneumoconiosis arising out of coal mine employment. Director's Exhibit 25. Claimant took no further action until filing a third claim on March 24, 1994. Director's Exhibit 1. The administrative law judge issued a Decision and Order with respect to this claim on June 20, 1996, in which he treated claimant's March 1994 application for benefits as a request for modification pursuant to 20 C.F.R. §725.310 of the previously denied claim. The administrative law judge accepted the parties' stipulation that claimant is suffering from a totally disabling respiratory impairment under 20 C.F.R. §718.204(c) and further determined that the evidence of record supported a finding of the existence of pneumoconiosis as well as total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.204(b), thus warranting modification of the previous denial. Accordingly, benefits were awarded.

Employer appealed the award of benefits to the Board and in *Matney v. Clinchfield Coal Co.*, BRB No. 96-1349 BLA (June 16, 1997)(unpub.), the Board vacated the administrative law judge's finding under Section 725.310, holding that the fact that the district director's denial letter informed claimant that he had sixty days to request a hearing or submit additional evidence did not postpone the effective date of the denial of the claim. The Board further held that the administrative law judge should have treated the March 1994 claim as a duplicate claim subject to the provisions of 20 C.F.R. §725.309. Accordingly, the Board remanded the case to the administrative law judge with instructions to consider whether claimant established a material change in conditions under the standard adopted by the United States Court of Appeals for the Fourth Circuit in *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995). With respect to the administrative law judge's consideration of the medical evidence of record, the Board affirmed the administrative law judge's decision to discredit the opinion of Dr. Castle, holding that the administrative law judge rationally determined that Dr. Castle did not adequately account for claimant's lengthy history of coal mine employment, but vacated the administrative law judge's determination that Dr. Sargent's opinion was hostile to the Act and his favorable treatment of Dr. Forehand's opinion. The Board thus vacated the administrative law judge's finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4) as well as his finding that claimant's total disability was due in part to pneumoconiosis pursuant to Section 718.204(b).

On remand, the administrative law judge found that claimant established a material change in conditions pursuant to Section 725.309 as the newly submitted medical reports of Drs. Patel, Forehand, and Michos supported a finding of the

existence of pneumoconiosis under Section 718.202(a)(4). The administrative law judge further noted that the record established significantly more than ten years of coal mine employment. He then concluded that claimant was entitled to the presumption that his pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(b). The administrative law judge also determined that the medical opinions of record were sufficient to establish that claimant was totally disabled due to pneumoconiosis pursuant to Section 718.204(b). Accordingly, benefits were awarded.

Employer appealed the award of benefits to the Board and in *Matney v. Consolidation [sic] Coal Co.*, BRB No. 98-0423 BLA (May 17, 1999)(unpub.), the Board affirmed the administrative law judge's crediting of the opinions of Drs. Patel and Forehand pursuant to Sections 718.202(a)(4), 718.203(b), 718.204(b) and 725.309. The Board also affirmed the administrative law judge's rejection of Dr. Fino's opinion as inconsistent with the Act, but vacated the administrative law judge's finding with respect to Dr. Sargent's opinion and remanded the case for the administrative law judge to reconsider this opinion on the merits under Sections 718.203(b) and 718.204(b).

On remand for the second time, the administrative law judge reconsidered the evidence, primarily by comparing and contrasting the medical opinions of Drs. Forehand and Sargent, and found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a)(4) and 718.203(b) as well as total disability due to pneumoconiosis pursuant to Section 718.204(b). Accordingly, benefits were awarded. On appeal herein, employer contends that the administrative law judge erred in his consideration of Dr. Sargent's opinion in finding the existence of pneumoconiosis and total disability due to pneumoconiosis established pursuant to Sections 718.202(a)(4) and Section 718.204(b). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

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 the 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer contends that the administrative law judge provided an erroneous reason for rejecting the opinion of Dr. Sargent that claimant suffers from asthma and

not pneumoconiosis, ignored the opinion of Dr. Castle in reaching his conclusion and accepted the opinion of Dr. Forehand without discussion. Dr. Sargent examined claimant on November 3, 1992, and obtained a chest x-ray, pulmonary function study, blood gas study, and an electrocardiogram. Director's Exhibit 25. Dr. Sargent stated that:

> It is my impression that Mr. Matney is not suffering from coal workers' pneumoconiosis. This determination is made on the basis of the character of the ventilatory impairment that is present, and also on the basis of the fact that he has a negative x-ray. Coal workers' pneumoconiosis when it causes a ventilatory impairment, causes a mixed obstructive and restrictive pattern, and also causes a ventilatory impairment in the presence of a positive x-ray. Mr. Matney has a partially reversible obstructive impairment without evidence of restriction. This type of impairment is inconsistent with abnormalities due to coal workers' pneumoconiosis. Also, the fact that there is partial reversibility argues against impairment due to pneumoconiosis, since pneumoconiosis is considered to be an irreversible impairment.

Director's Exhibit 25. Dr. Sargent further concluded that claimant's obstructive impairment is totally disabling and is due to asthma, caused by hereditary factors, while conceding that claimant has no personal or family history of asthma. Decision and Order on Remand at 2-3, 4-6; Director's Exhibit 25. In reaching his conclusion, Dr. Sargent referred to the reversibility of claimant's impairment, as demonstrated on his November 3, 1992, pulmonary function study. *Id.* Based on this discussion, the administrative law judge inferred that Dr. Sargent's analysis of the pulmonary function study data, which showed a substantial improvement in the FEV_1 value after the administration of bronchodilator medication, was the definitive factor the physician relied upon in diagnosing asthma and rejecting pneumoconiosis as the cause of claimant's pulmonary condition. Decision and Order on Remand at 6. The administrative law judge also discussed how the results of Dr. Forehand's July 27, 1992, pulmonary function study were substantially similar to Dr. Sargent's 1992 study as it also showed a substantial improvement in the FEV_1 value after the administration of bronchodilator medication, but that the FEV_1 values obtained before and after the administration of bronchodilator medication in Dr. Forehand's April 5, 1994, pulmonary function study showed a material reduction in the difference between the two values. Decision and Order on Remand at 7. In summary, the administrative law judge stated "where in 1992 Dr. Forehand reported an improvement of 30% and Dr. Sargent reported on an improvement of 23%, in 1994 Dr. Forehand reported an improvement of only 4%." *Id.* In light of the fact that the most recent FEV_1 data, which demonstrated a reduction in the reversibility after the

administration of bronchodilator medication, the administrative law judge determined that "Dr. Sargent's argument for diagnosing asthma based on the reversibility of the recent FEV_1 was not credible" and that Dr. Sargent's "diagnosis of asthma was not a persuasive alternative explanation" for claimant's totally disabling pulmonary impairment." Decision and Order on Remand at 7-9. The administrative law judge next found that Dr. Forehand's opinion established that claimant suffered from pneumoconiosis pursuant to Section 718.202(a)(4), and that employer failed to rebut the presumption that claimant's pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(b). In addition, again relying on Dr. Forehand's opinion after finding that claimant suffered from pneumoconiosis and not asthma, the administrative law judge concluded that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b). Decision and Order on Remand at 9-10.

Employer first asserts that the administrative law judge assumed the role of a physician by stating that asthma must always be reversible, the premise upon which the administrative law judge concluded that Dr. Sargent's diagnosis of asthma was wrong, but also alleges that Dr. Sargent, as well as Dr. Castle, presented evidence that untreated or inadequately treated asthma will result in irreversible lung impairments which the administrative law judge ignored. While the Board has long held that the interpretation of the objective data is a medical determination for which an administrative law judge cannot substitute his own opinion, *see Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986), the administrative law judge has substantial discretion in the consideration of the evidence and may assign more or less weight to an item of evidence, in relation to other evidence, for a variety of reasons and may credit the medical reports that are determined to be better supported by the objective evidence of record. *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Pastva v. The Youhiogheny and Ohio Coal Co.*, 7 BLR 1-829 (1985). An administrative law judge may also reject a report where the evidentiary foundation for the opinion is lacking. *See Cosalter v. Mathies Coal Co.*, 6 BLR 1-1182 (1984). An administrative law judge should also consider factors that tend to undermine the reliability of a doctor's opinion. *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). Finally, although the weighing of the evidence is for the administrative law judge, the interpretation of medical data is for the medical experts, *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986); *Bogan v. Consolidation Coal Co.*, 6 BLR 1-1000 (1984), and it is error for an administrative law judge to interpret medical tests and thereby substitute his conclusions for those of the physician.

In this case, contrary to employer's assertion, the administrative law judge acknowledged that, while diagnosing asthma, Dr. Sargent diagnosed an irreversible component attributable to inadequate long- term care. Decision and Order on

Remand at 5. The administrative law judge, moreover, thoroughly discussed the objective evidence upon which Dr. Sargent relied in making his diagnosis and, within his discretion as fact-finder, reasonably relied upon the reduction in the reversibility after the administration of bronchodilator medication in rejecting Dr. Sargent's diagnosis of asthma, which the administrative law judge concluded was premised on a significant reversibility after the administration of bronchodilator medication. The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc)*, *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Thus, we reject employer's assertions that the administrative law judge failed to provide a valid basis for according dispositive weight to the opinion of Dr. Forehand, which the administrative law judge found supported by its underlying documentation, and that the administrative law judge erred in discounting the medical opinions of Drs. Sargent and Castle. Because the administrative law judge's findings of the existence of pneumoconiosis arising out of coal mine employment and disability causation are neither patently unreasonable nor inherently incredible, *see Cordero v. Triple A Machine Shop*, 580 F.2d 1335, 8 BRBS 744 (9th Cir. 1978), *cert. denied* 440 U.S. 911 (1979), and, further, because the administrative law judge's findings of both the existence of pneumoconiosis arising out of coal mine employment and disability causation are supported by substantial evidence based on the record as a whole with no reversible error, they are affirmed. 20 C.F.R. §§ 718.202(a)(4), 718.203(b), 718.204(b).

Accordingly, the Decision and Order After Second Remand of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge