BRB No. 00-0133 BLA

GERALD H. TRIPLETT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED:
	)	
SEWELL 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 Awarding Benefits of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

William S. Mattingly (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (99-BLA-0094) of Administrative Law Judge Gerald M. Tierney 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). The administrative law judge credited claimant with thirty-two years of coal mine employment, based on a stipulation of the parties, and adjudicated the claim pursuant to 20 C.F.R. Part 718, in light of claimant's April 1, 1998 filing date. Initially, the administrative law

judge acknowledged employer's concession that claimant suffers from a totally disabling respiratory or pulmonary impairment, as well as, its concessions that it is the properly named responsible operator and that claimant has one dependent for purposes of augmentation. Addressing the merits of entitlement, the administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203. The administrative law judge further found that the evidence was sufficient to establish that claimant's total disability was due, at least in part, to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge awarded benefits. Additionally, the administrative law judge found the date from which benefits commence to be April 1, 1998, the month during which the claim was filed.

On appeal, employer contends that the administrative law judge erred in finding the evidence sufficient to establish entitlement to benefits. In particular, employer contends that the administrative law judge erred in finding the medical opinion evidence sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Additionally, employer contends that the administrative law judge failed to provide adequate findings under Section 718.204(b). In response, claimant urges affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.[1]

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).

In challenging the administrative law judge's award of benefits, employer contends that the administrative law judge erred in his weighing of the medical

[1] Inasmuch as the parties do not challenge the administrative law judge's decision to credit claimant with thirty-two years of coal mine employment, or his findings at 20 C.F.R. §§718.202(a)(1)-(3), 718.203 and 718.204(c), these findings are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

opinion evidence pursuant to Section 718.202(a)(4). In particular, employer contends that the administrative law judge erred in crediting the opinions of Drs. Durham and Rasmussen over the contrary opinions of Drs. Bellotte and Branscomb without providing an adequate rationale for his weighing of these opinions. These contentions have merit.

In weighing the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge found the opinions of Drs. Durham and Rasmussen more credible than the contrary opinions of Drs. Bellotte and Branscomb. Decision and Order at 9. However, as employer correctly contends, the administrative law judge failed to adequately explain the bases for his conclusion. In particular, the administrative law judge, while discussing the medical opinions of Drs. Durham and Rasmussen, *see* Decision and Order at 8, did not discuss the contrary opinions of Drs. Bellotte and Branscomb, or his rationale for according these opinions little weight. Decision and Order at 8-9. We, therefore, vacate the administrative law judge's findings hereunder and remand the case to the administrative law judge for further consideration of all of the relevant evidence of record. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Tackett v. Director, OWCP*, 7 BLR 1-703 (1985).

Moreover, as employer correctly contends with respect to Dr. Rasmussen's opinion, the administrative law judge did not adequately discuss the discrepancies in claimant's reported smoking history. Specifically, while noting the different histories reported by claimant, *see* Decision and Order at 3, the administrative law judge, nonetheless, did not render a determination as to the length of claimant's smoking history. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). Consequently, on remand, the administrative law judge must render a specific finding regarding the discrepancies in claimant's smoking history and the effect it has on the credibility of the physicians' opinions. *Trumbo, supra*; *see also Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985).

We, however, reject employer's contention that the administrative law judge erred in finding the opinion of Dr. Durham sufficient to show the existence of pneumoconiosis. Contrary to employer's contention, the administrative law judge noted the equivocal nature of Dr. Durham's deposition testimony, but, nonetheless, reasonably exercised his discretion in finding that this opinion was still sufficient to establish that claimant's coal mine employment was a contributing factor in claimant's respiratory disability. Decision and Order at 8. Inasmuch as the administrative law judge need not discredit an opinion which he finds

equivocal but must simply discuss the qualified nature of the opinion, *see Salisbury v. Island Creek Coal Co.*, 7 BLR 1-501 (1984), we affirm the administrative law judge's decision to credit the opinion of Dr. Durham as showing the existence of pneumoconiosis pursuant to Section 718.201. Decision and Order at 8; 20 C.F.R. §§718.201, 718.202(a)(4); *Nance v. Benefits Review Board*, 861 F.2d 68, 12 BLR 2-31 (4th Cir. 1988); *Handy v. Director, OWCP*, 16 BLR 1-73 (1990).

Moreover, subsequent to the issuance of the administrative law judge's current Decision and Order, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, held that while Section 718.202(a) lists alternative methods for establishing the existence of pneumoconiosis, the administrative law judge must, nonetheless, weigh all types of relevant evidence together to determine whether a claimant suffers from the disease. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2- (4th Cir. 2000). Consequently, if, on remand, the administrative law judge again finds the medical evidence sufficient to establish the existence of pneumoconiosis pursuant to either Section 718.202(a)(4), he must then weigh all of the evidence relevant to Section 718.202(a)(1)-(4) together in determining whether claimant has established the existence of pneumoconiosis. *Id*.

Furthermore, we vacate the administrative law judge's finding that the evidence was sufficient to establish that claimant's respiratory impairment was due to pneumoconiosis pursuant to Section 718.204(b). The administrative law judge, in finding the evidence sufficient to establish that claimant's total disability was due to pneumoconiosis, merely relied on his weighing of the medical evidence pursuant to Section 718.202(a)(4), to accord greater weight to the opinions of Drs. Durham and Rasmussen, and did not render separate findings. Decision and Order at 9. Therefore, in light of our holding to vacate the administrative law judge's findings pursuant to Section 718.202(a)(4), *see* discussion, *supra*, we further vacate his Section 718.204(b) finding and remand the case to the administrative law judge to more adequately explain the bases for his conclusion. *See Tackett, supra*; *see also Wojtowicz, supra*. Therefore, if on remand, the administrative law judge finds that claimant has established the existence of pneumoconiosis pursuant to Section 718.202(a), he must then determine whether claimant's pneumoconiosis was a substantially contributing cause of his total respiratory disability pursuant to Section 718.204(b). *Director, OWCP v. Richardson*, 94 F.3d 164, 21 BLR 2-373 (4th Cir. 1996); *Hobbs v. Clinchfield Coal Co.* [*Hobbs II*], 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge