BRB No. 89-1856 BLA
Case No. 88-BLA-2262

ELZIE ALLEN	)	
	)	
Claimant-Respondent	)	
	)	DATE ISSUED:_____
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER on RECONSIDERATION

Appeal of the Decision and Order of John H. Bedford, Administrative Law Judge, United States Department of Labor.

Mark E. Solomons (Arter & Hadden), Washington, D.C., for employer/carrier.

Before: SMITH, DOLDER, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer moves for reconsideration of the Board's Decision and Order in *Allen v. Island Creek Coal Co.*, 15 BLR 1-32 (1991), which involves the resolution of a bill dispute in a medical benefits only claim. The administrative law judge denied employer's motion to compel an employer-sponsored examination of claimant by which employer sought to challenge the reasonableness and necessity of medical bills submitted by Dr. Zamzam for the treatment of claimant's chronic bronchitis and chronic obstructive pulmonary disease (COPD). The Board held that the administrative law judge acted within his discretion in refusing to compel an examination because employer did not proffer evidence to show that its request for an examination is reasonable. *Id.* Employer challenges the Board's holding, arguing that the case must be remanded to the administrative law judge for *de novo* findings regarding the reasonableness of employer's request for an examination. Claimant, who is without legal representation, and the Director, Office of Workers' Compensation Programs, have not responded to employer's motion for reconsideration.

Initially, we note that the crux of employer's dispute of the medical bills is that Dr. Zamzam's treatment of claimant's chronic bronchitis and chronic obstructive pulmonary disease (COPD) is not compensable because those respiratory conditions do not fall within the regulatory definition of pneumoconiosis. Contrary to employer's argument, insofar as claimant is entitled to a presumption that his chronic bronchitis and COPD is substantially related to or aggravated by the presence of pneumoconiosis, employer is liable for the medical costs related to claimant's treatment. *See Doris Coal Co. v. Director, OWCP [Stiltner]*, 938

F.2d 492, 15 BLR 2-135 (4th Cir. 1991), *aff'g in part and rev'g in part Stiltner v. Doris Coal Co.*, 14 BLR 1-116 (1990) (*en banc*) (Brown, J., dissenting; McGranery, J., concurring and dissenting); *Seals v. Glen Coal Co.*, 19 BLR 1-80 (1995) (*en banc*) (Brown, J., concurring). In order to rebut that presumption, employer must show by a reasoned medical opinion that Dr. Zamzam's expenses were not reasonable for the treatment he prescribed, or that his treatment was unrelated to pneumoconiosis. As there is no evidence of record to rebut the *Stiltner* presumption, we decline to remand this case to the administrative law judge.[1] *See Stiltner, supra*.

Accordingly, while we grant employer's motion for reconsideration, we deny the relief requested.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[1] Employer also argues on reconsideration that Dr. Zamzam's treatment notes are insufficient to submit to a consulting physician, thereby requiring that employer have claimant examined. This argument is without merit as Dr. Zamzam's medical records include x-ray and physical findings, and document the medication prescribed to claimant for the treatment of his chronic bronchitis and chronic obstructive pulmonary disease. *See Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991), *aff'g in part and rev'g in part Stiltner v. Doris Coal Co.*, 14 BLR 1-116 (1990) (*en banc*) (Brown, J., dissenting; McGranery, J., concurring and dissenting).

Desk Book Section: Part III.B.1.

The Board denied reconsideration, rejecting employer's request that the case be remanded to the administrative law judge for de novo findings as to the reasonableness of employer's request for an examination. The Board declined to remand the case, noting that claimant is entitled to the presumption set forth in ***Doris Coal Co. v. Director, OWCP [Stiltner]***, 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991), *aff'g in part and rev'g in part* ***Stiltner v. Doris Coal Co.***, 14 BLR 1-116 (1990)(en banc)(Brown, J., dissenting; McGranery, J., concurring and dissenting), and that there is no evidence of record to rebut that presumption. ***Allen v. Island Creek Coal Co.***, BLR 1- , BRB No. 89-1856 BLA (Aug. 27, 1996), *aff'g on recon.* 15 BLR 1-32 (1991).