

BRB No. 07-0692 BLA

C. P.)
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 04/30/2008
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order on Remand – Denial of Benefits of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

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

Helen H. Cox (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting 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 – Denial of Benefits (2004-BLA-05364) of Administrative Law Judge Paul H. Teitler 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 on appeal to the Board for the second time. In its Decision and Order issued on July 28, 2005, the Board affirmed the administrative law judge's finding of twelve years of coal mine employment¹ and that the

¹ Because claimant's coal mine employment occurred in Pennsylvania, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 3.

evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b) as conceded by the Director, Office of Workers' Compensation Programs (the Director). [*C.P.*] v. *Director, OWCP*, BRB No. 04-0843 BLA (July 28, 2005)(unpub.). The Board also granted the Director's request to vacate the denial of benefits and remand the case to the district director to develop evidence that would fulfill the Director's obligation to provide claimant with a complete pulmonary evaluation addressing the issues of the existence of pneumoconiosis and disability causation. The Board instructed the administrative law judge that once the additional evidentiary development was completed, he was required to reconsider this claim on the merits in light of the new evidence.

Claimant filed a timely motion for reconsideration of the Board's decision, arguing that the Board erred in remanding the case to the district director for an additional pulmonary evaluation pursuant to 20 C.F.R. §725.406 and reiterating his challenge to the administrative law judge's findings at 20 C.F.R. §§725.456(b)(3), (4), 725.414, 718.202(a)(4) and 718.204(c). The Director did not file a response to claimant's motion for reconsideration. The Board declined to alter its decision to remand the case to the district director for further development of the medical evidence pursuant to 20 C.F.R. §725.406, but advised claimant that he may, on remand, decline the opportunity to undergo another pulmonary evaluation. [*C.P.*] v. *Director, OWCP*, BRB No. 04-0843 BLA (*modified on recon.*) (Feb. 15, 2006)(unpub.). Pursuant to 20 C.F.R. §725.456(b)(3), the Board again held that on remand the administrative law judge must consider whether good cause exists for the late admission of Dr. Barrett's negative reading of the June 25, 2003 x-ray into the record. *Id.* Pursuant to 20 C.F.R. §725.456(b)(4), the Board also held that the administrative law judge erred in prohibiting claimant from submitting another reading of the June 25, 2003 x-ray in rebuttal of Dr. Barrett's negative reading, but rejected claimant's assertion that the evidentiary limitations set forth in 20 C.F.R. §725.414 violate claimant's right to due process. *Id.*

Pursuant to 20 C.F.R. §718.202(a)(4), the Board held that, in considering the conflicting medical opinions with respect to the issue of "clinical" pneumoconiosis, the administrative law judge properly found that Dr. Cali's opinion outweighed Dr. Kraynak's contrary opinion on the basis of Dr. Cali's superior qualifications.² [*C.P.*], recon. slip op. at 7. The Board further held that the administrative law judge acted within his discretion in finding that Dr. Kraynak's opinion is not entitled to dispositive weight based on his status as claimant's treating physician. *Id.* at 7-8. However, in light of its decision to remand the case to the district director for further development of the medical

² Dr. Cali is Board-certified in internal medicine and pulmonary medicine, Director's Exhibit 36, while Dr. Kraynak is Board-eligible in family medicine, Claimant's Exhibit 6.

evidence, and based on the Director's concession that Dr. Cali did not address the issue of "legal" pneumoconiosis in his reports,³ the Board vacated the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). [*C.P.*], recon. slip op. at 9. The Board instructed the administrative law judge to consider on remand the issue of "legal" pneumoconiosis at 20 C.F.R. §718.202(a)(4), if the case was returned to him from the district director after the Director's obligation to provide a complete pulmonary evaluation has been satisfied. *Id.*

Lastly, the Board vacated the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c) and remanded the case for further consideration of the evidence, if reached. [*C.P.*], recon. slip op. at 9-10. Accordingly, claimant's motion for reconsideration was granted, in part, the Board's Decision and Order issued July 28, 2005 was modified, and the case was remanded to the district director for further development of the medical evidence.

On remand, the administrative law judge noted that claimant had declined the opportunity to undergo another pulmonary evaluation and requested that the case be returned to the administrative law judge. Decision and Order at 2. Pursuant to 20 C.F.R. §725.456(b)(3), the administrative law judge found that the Director established good cause to admit Dr. Barrett's negative reading of the June 25, 2003 x-ray. Decision and Order at 5. Pursuant to 20 C.F.R. §725.456(b)(4), the administrative law judge permitted claimant to submit Dr. Smith's positive reading of the same x-ray as rebuttal evidence. *Id.* Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge found the x-ray evidence sufficient to establish the existence of pneumoconiosis. *Id.* In addition, the administrative law judge found that although the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), it did not outweigh his finding that the evidence established clinical pneumoconiosis by x-ray. Decision and Order at 6. The administrative law judge further concluded that while claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), the evidence was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge failed to properly analyze the medical opinion evidence relevant to the issue of causation at 20 C.F.R. §718.204(c), and failed to set forth the rationale underlying his findings as required by

³ Although Dr. Cali diagnosed chronic obstructive pulmonary disease, he did not render an opinion with respect to the cause of this condition. Director's Exhibits 21, 41.

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). Claimant requests that the Board reverse the administrative law judge's denial of benefits and enter an award of benefits effective February 2003. The Director, in response, has filed a motion to remand the case to the administrative law judge for reconsideration of Dr. Kraynak's opinion. Specifically, the Director argues that the administrative law judge should explain, in accordance with the APA, his findings on disability causation at 20 C.F.R. §718.204(c). In his reply brief, claimant reiterates his request for the Board to enter an award of benefits, and alternatively joins with the Director to request the Board to vacate the denial of benefits and remand this case for the administrative law judge to reconsider the evidence at 20 C.F.R. §718.204(c).⁴

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 and the Director argue that the administrative law judge failed to explain his findings in sufficient detail to comply with the APA, specifically in discrediting and selectively analyzing Dr. Kraynak's opinion that pneumoconiosis contributed to claimant's total disability. We agree. The APA requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by 5 U.S.C. §554(c)(2) and 33 U.S.C. §919(d); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). In this case, the administrative law judge considered the conflicting opinions of Dr. Cali and Dr. Kraynak. Decision and Order at 7; Director's Exhibits 21, 41, 46, 47. Dr. Cali determined that claimant's total disability was not due to pneumoconiosis because claimant did not have pneumoconiosis. Director's Exhibits 21, 41. In contrast, Dr. Kraynak opined that claimant was totally disabled due to pneumoconiosis. Director's Exhibits 46, 47. The administrative law judge found Dr. Kraynak's opinion insufficient to establish that claimant's clinical pneumoconiosis substantially contributed to his totally disabling respiratory impairment, stating:

⁴ We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a), 718.203(b) and total disability pursuant to 20 C.F.R. §718.204(b). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); *see* Director's Motion to Remand at 6.

Dr. Kraynak finds the Claimant's smoking history to be insignificant, whether it is found to be five or ten years, while he finds Claimant's coal mine dust exposure to be controlling whether it is 2.6 or ten years.

Decision and Order at 7. The administrative law judge then concluded that Dr. Kraynak's opinion is not "sufficiently reasoned or documented" to meet claimant's burden of proof. *Id.*

We consider the administrative law judge's analysis to be too cursory to satisfy the requirements of the APA. *See Wojtowicz*, 12 BLR at 1-165. We agree with claimant and the Director that the administrative law judge must provide the bases for finding that Dr. Kraynak's opinion is not adequately documented or reasoned in light of the twelve years of coal mine employment found by the administrative law judge and the five years of cigarette smoking, as relied on by Dr. Kraynak, as well as claimant's medical history, pulmonary function test and physical examination.⁵ Director's Exhibits 46, 47. Moreover, if the administrative law judge credits Dr. Kraynak's opinion, but finds it outweighed by Dr. Cali's contrary opinion, the administrative law judge must address the fact that the Director has conceded that Dr. Cali did not credibly address the issue of total disability due to pneumoconiosis. Director's Motion to Remand at 5-6; [C.P.], recon. slip op. at 2. Thus, we vacate the administrative law judge's finding that claimant failed to

⁵ Claimant contends that the record does not support a rejection of Dr. Kraynak's opinion because he relied upon an inaccurate length of coal mine employment. Claimant notes that Dr. Kraynak based his opinion upon a consideration of ten years of coal mine employment, as reported by claimant, and the district director's initial finding of 2.6 years of coal mine employment. Claimant notes that in his deposition Dr. Kraynak stated:

...[I]n most cases if you work over 10 years it's more probable than not that you would have [p]neumoconiosis and maybe develop some respiratory problems. It doesn't mean that someone with less than 10 years would not develop pulmonary problems with exposure to coal dust. And in [claimant's] case specifically, this gentleman has a relatively benign work history. He worked as a police officer for years, wasn't exposed to any other dust, gas, or fumes, chemicals other than that encountered in the anthracite coal region. And he does allege over 10 years of exposure, although he's only been credited so far with 2.6 years...given that, it would still be my opinion that 2.6 years of exposure would give rise to the pulmonary impairment that he currently suffers from.

Claimant's Brief at 14.

establish that his pneumoconiosis was a substantially contributing cause of his total disability, and remand this case to the administrative law judge to explain the bases for his findings at 20 C.F.R. §718.204(c). On remand, the administrative law judge must reconsider whether Dr. Kraynak’s opinion is reasoned and documented,⁶ and sufficient to satisfy claimant’s burden of establishing that his pneumoconiosis is a substantially contributing cause of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c). The administrative law judge must also set forth the rationale for all of his credibility determinations in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the administrative law judge’s Decision and Order on Remand – Denial of Benefits is affirmed in part, and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁶ A “reasoned” opinion is one in which the administrative law judge finds the underlying documentation adequate to support the physician’s conclusions. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). A “documented” opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Id.*