

BRB No. 10-0409 BLA

CRATE WILLIS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
WESTMORELAND COAL COMPANY)	
)	DATE ISSUED: 04/15/2011
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 on Second Remand of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Timothy C. MacDonnell (Black Lung Legal Clinic, Washington and Lee University School of Law), Lexington, Virginia, for claimant.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Jeffrey S. Goldberg (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits on Second Remand (2003-BLA-06684) of Administrative Law Judge Richard A. Morgan rendered on a subsequent claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act). This case is before the Board for the third time. In the most recent decision,¹ pursuant to employer’s appeal, the Board vacated the administrative law judge’s award of benefits and remanded the case for the administrative law judge to reconsider the medical opinions with respect to the issue of disability causation, pursuant to 20 C.F.R. §718.204(c). Specifically, the Board held that the administrative law judge failed to sufficiently explain his determination to credit the opinions of Drs. Haddadin and Mullins, that claimant’s disabling respiratory impairment is due to a combination of coal mine dust exposure and smoking, over the opinions of Drs. Crisalli and Castle, that claimant’s respiratory disability is due entirely to smoking. *C.W. [Willis] v. Westmoreland Coal Co.*, BRB No. 08-0615 BLA (June 30, 2009)(unpub.).

On remand, the administrative law judge found disability causation established at Section 718.204(c), based on the opinion of Dr. Haddadin, as supported by the opinion of Dr. Mullins. The administrative law judge rejected the contrary opinions of Drs. Crisalli and Castle on that issue, because neither doctor diagnosed clinical or legal pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge’s findings at Section 718.204(c) are unsupported by substantial evidence, and that the administrative law judge failed to provide any valid rationale for crediting the opinions of Drs. Haddadin and Mullins, or for discrediting those of Drs. Crisalli and Castle. Employer’s Brief at 10-15. Claimant responds, urging affirmance of the administrative law judge’s award of

¹ The procedural history of this case is set forth in the Board’s last decision. *C.W. [Willis] v. Westmoreland Coal Co.*, BRB No. 08-0615 BLA (June 30, 2009)(unpub.). At this point in the proceedings, the Board has affirmed the administrative law judge’s findings that claimant established the existence of both clinical and legal simple pneumoconiosis, arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203(b), but failed to establish the presence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a)-(c). Further, the Board has noted employer’s concession that claimant has a totally disabling respiratory impairment, pursuant to 20 C.F.R. §718.204(b), and affirmed the administrative law judge’s finding that a change in an applicable condition of entitlement was established in this subsequent claim, at 20 C.F.R. §725.309. *Willis*, BRB No. 08-0615 BLA, slip op. at 2 n.2; *Willis v. Westmoreland Coal Co.*, BRB No. 06-0397 BLA, slip op. at 2 n.2 (Mar. 28, 2007)(unpub.)(McGranery, J. dissenting).

benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief relevant to the merits of entitlement.

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

To establish entitlement to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

By Order dated June 18, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148, which amended the Act with respect to the entitlement criteria for certain claims.² Claimant, employer, and the Director have responded, correctly asserting that Section 1556 does not apply to this living miner's claim because it was filed prior to January 1, 2005.

Relevant to the merits of entitlement, in evaluating the medical opinions as to the issue of disability causation, the administrative law judge initially considered the physicians' qualifications and found that Drs. Haddadin, Mullins, Castle and Crisalli are all Board-certified pulmonary specialists. However, based on his review of the physicians' additional qualifications, such as their various positions and professorships held, and their experience, the administrative law judge found that Dr. Crisalli is the most highly qualified of the group, followed by Drs. Castle, Haddadin, and Mullins.³ Decision and Order at 4.

² Section 1556 of Pub. L. No. 111-148, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(I)) (the Act), reinstated, in pertinent part, the "15-year presumption" of totally disabling pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that were pending on or after March 23, 2010.

³ The record also contains the 1985 opinion of Dr. Daniels, that claimant has pneumoconiosis due to coal dust exposure, and chronic obstructive pulmonary disease (COPD), unrelated to coal dust exposure, but does not suffer from any significant pulmonary dysfunction. Director's Exhibit 1. The administrative law judge found Dr.

The administrative law judge also considered the quality of the physicians' reasoning. Contrary to employer's argument, the administrative law judge permissibly found that Dr. Haddadin's opinion, that both coal mine dust exposure and smoking contributed to claimant's disabling respiratory impairment, was "well-reasoned" and entitled to "significant weight," because Dr. Haddadin took into account the results of his physical examination and objective testing, claimant's treatment records, the reports and objective testing of Drs. Mullins, Crisalli, and Branscomb, and claimant's smoking and coal mine dust exposure histories. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003); Decision and Order at 6-7; Employer's Brief at 11-13. Further, the administrative law judge permissibly found Dr. Haddadin's opinion to be persuasive, because it was consistent with both his own findings that claimant suffers from clinical and legal pneumoconiosis, and with the Department of Labor's recognition that coal mine dust and cigarette smoking cause obstructive impairments through similar mechanisms. *See Consolidation Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-383-84 (4th Cir. 2002); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); *J.O. [Obush] v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009); 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); Decision and Order at 7; Employer's Brief at 11-13.

The administrative law judge also acted within his discretion in finding Dr. Mullins' opinion, that both coal mine dust exposure and smoking contributed to claimant's disabling respiratory impairment, to be sufficiently "reasoned and documented" to be supportive of Dr. Haddadin's opinion, because it was based on the results of her physical examination and testing. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; *Gross*, 23 BLR at 1-18-19; Decision and Order at 7; Employer's Brief at 14.

Further, while the administrative law judge concluded that Dr. Crisalli provided the "best reasoned and documented" opinion, and that Dr. Castle provided a "thorough" opinion, the administrative law judge properly discounted their opinions regarding disability causation, in part, because they did not diagnose clinical or legal pneumoconiosis, contrary to the administrative law judge's findings. *Scott*, 289 F.3d at

Daniels' opinion to be "unhelpful" because his qualifications were unknown and his report did not reflect consideration of coal dust as a possible etiology of claimant's COPD. Decision and Order at 4, 7. Employer raises no arguments with respect to the administrative law judge's consideration of Dr. Daniels' opinion.

269, 22 BLR at 2-383-84; *Toler*, 43 F.3d at 116, 19 BLR at 2-83; Decision and Order at 7-9. Thus, there is no merit to employer's contention that the administrative law judge failed to provide a valid reason for according less probative weight to the opinions of Drs. Crisalli and Castle. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983); Employer's Brief at 10-11.

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences, see *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 170, 21 BLR 2-34, 2-47 (4th Cir. 1997); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096, 17 BLR 2-123, 2-126 (4th Cir. 1993), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See *Anderson*, 12 BLR at 1-113. The administrative law judge properly considered "the qualifications of the respective physicians, the explanation of their medical opinions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses," *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76, and adequately explained his determination to credit the opinion of Dr. Haddadin, as supported by the opinion of Dr. Mullins, over the opinions of Drs. Crisalli and Castle. See *Lane Hollow Coal Co. v. Director, OWCP [Lockhart]*, 137 F.3d 799, 803-04, 21 BLR 2-302, 2-310-12 (4th Cir. 1998). We, therefore, affirm the administrative law judge's finding that the medical opinion evidence establishes that claimant's disabling respiratory impairment is due, in part, to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), as it is supported by substantial evidence.

Accordingly, the administrative law judge's Decision and Order – Awarding Benefits on Second Remand is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge