BRB No. 97-1051 BLA

WILLIAM C. HERRING	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Respondent	)	

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

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Dorothy L. Page (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-0796) of Administrative Law Judge Ainsworth H. Brown denying 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). The administrative law judge credited claimant with four years of coal mine employment and accepted the parties' stipulation to the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). The administrative law judge concluded, however, that the medical evidence of record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). Accordingly, he denied benefits.

On appeal, claimant contends that the administrative law judge failed to consider all of the x-ray evidence pursuant to Section 718.202(a)(1) and failed to determine whether one of

the x-ray readings was sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis set forth at Section 411(c)(3)(A) of the Act. 30 U.S.C. §921(c)(3)(A). Claimant further asserts that the administrative law judge's failure to properly consider the x-ray evidence affected his weighing of the medical opinions at Section 718.202(a)(4). The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand, asserting that the administrative law judge failed to consider all of the x-ray evidence and failed to explain his finding pursuant to Section 718.202(a)(1).[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 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).

Section 718.202(a)(1) provides for a finding of the existence of pneumoconiosis by chest x-ray. 20 C.F.R. §718.202(a)(1). The record contains four x-rays. The first two x-rays were taken on February 20th and July 26th of 1995. The other two x-rays were both taken on the same day, April 10, 1996, but at different medical facilities. One of the two April 10, 1996 x-rays was taken at Good Samaritan Hospital, and the other was taken in the office of Dr. Raymond J. Kraynak. Hearing Transcript at 5; Director's Exhibits 25, 27-29, 35, 44; Claimant's Exhibits 4-9. The four x-rays of record were read twenty-three times. Thirteen readings were positive for simple pneumoconiosis and ten were negative for the disease. Twelve of the positive readings were by physicians dually qualified as Board-certified radiologists and B-readers and the additional positive reading was by a Board-certified radiologist. Eight of the negative readings were by Board-certified radiologists and B-readers, and two were by B-readers. In addition to the readings relevant to the existence of simple pneumoconiosis, Dr. Marshall, a Board-certified radiologist and B-reader, indicated the presence of large opacities on the February 20, 1995 x-ray, Claimant's Exhibit 3, a radiological finding relevant to the existence of complicated pneumoconiosis. *See* 30 U.S.C. §921(c)(3)(A).

Pursuant to Section 718.202(a)(1), the administrative law judge found that, "overall, the chest x-ray evidence is in equipoise as far as the B-readers are concerned," and concluded that the x-ray evidence therefore failed to establish the existence of pneumoconiosis. Decision and Order at 6. Claimant and the Director allege that the

[1] We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(2) and 718.204(c). *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

administrative law judge miscounted the number of x-rays taken, which caused him to fail to weigh all of the x-ray readings pursuant to Section 718.202(a)(1). Claimant's Brief at 4-5; Director's Motion at 2-3. They further assert that the administrative law judge overlooked a positive reading of the April 10, 1996 Good Samaritan Hospital x-ray, Claimant's Exhibit 6, and failed to address Dr. Marshall's notation of large opacities on the February 20, 1995 x-ray. Claimant's Brief at 4; Director's Motion at 3. The Director also argues that the administrative law judge's finding is too cursory to meet the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2); *see Wensel v. Director, OWCP*, 888 F.2d 14, 13 BLR 2-88 (3d Cir. 1989); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Director's Motion at 2. These contentions have merit.

As the parties allege, the administrative law judge, in summarizing the x-ray readings, failed to consider that two separate x-rays were taken on April 10, 1996. Decision and Order at 6. This error caused him to consider a positive reading of the April 10, 1996 x-ray taken in Dr. Kraynak's office to be merely a duplicate reading of the Good Samaritan Hospital x-ray of the same date. Claimant's Exhibit 7. This is turn led the administrative law judge to mischaracterize the alignment of the qualified readers on the two April 10, 1996 x-rays.[2] Decision and Order at 6. Further, the parties correctly note that the administrative law judge did not consider Dr. Bassali's positive reading of the April 10,

[2] The readings of the two April 10, 1996 x-rays were:

4/10/96--Good Samaritan Hospital

Exhibit	**Physician**	**Qualifications**	**Reading**
CX 4	Mathur	BCR/B	1/2
CX 5	Marshall	BCR/B	2/1
CX 6	Bassali	BCR/B	1/0
DX 28	Conrad	BCR	1/1
DX 29, 35	Barrett	BCR/B	negative
DX 25	Cole	BCR/B	negative
DX 27	Foreman	B	negative

4/10/96--Kraynak

Exhibit	**Physician**	**Qualifications**	**Reading**
CX 7	Mathur	BCR/B	1/1
CX 8	Marshall	BCR/B	1/0
CX 9	Smith	BCR/B	1/0
DX 44	Barrett	BCR/B	negative

CX, DX -- Claimant's, Director's Exhibits
BCR -- Board-certified radiologist
B -- B-reader

1996 Good Samaritan Hospital x-ray. Claimant's Exhibit 6. Additionally, because the administrative law judge gave only a cursory explanation as to why he found that the x-ray evidence did not establish the existence of pneumoconiosis, Decision and Order at 6, the administrative law judge failed to provide a sufficient rationale for his weighing of the evidence as required by the APA. *See Wensel, supra*; *Wojtowicz, supra*.

In addition, the parties correctly note that the administrative law judge did not address Dr. Marshall's notation of large opacities February 20, 1995 x-ray. Claimant's Exhibit 3. Section 411(c)(3)(A) of the Act, as implemented at 20 C.F.R. §718.304(a), provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which when diagnosed by chest x-ray, "yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization." 30 U.S.C. §921(c)(3)(A). The administrative law judge must weigh all the relevant evidence on the question of whether complicated pneumoconiosis is present. *Melnick v. Consolidation Coal Co*., 16 BLR 1-31 (1991).

In light of the foregoing, the administrative law judge's finding pursuant to Section 718.202(a)(1) and his finding at Section 718.202(a)(3) must be vacated. Decision and Order at 6. On remand, the administrative law judge must weigh all readings of the four x-rays in light of the readers' radiological qualifications, address Dr. Marshall's finding of large opacities on the February 20, 1995 x-ray, *see Melnick, supra*, and explain thoroughly the reasons for his findings. *See Wensel, supra*; *Wojtowicz, supra*.

Pursuant to Section 718.202(a)(4), claimant contends that the administrative law judge relied on his defective analysis at Section 718.202(a)(1) to weigh the medical opinion evidence. Claimant's Brief at 6. Dr. Kraynak, Board-eligible in family medicine and claimant's treating physician, examined and tested claimant, reviewed the medical evidence, and diagnosed pneumoconiosis. Claimant's Exhibits 10, 18. Dr. Kruk, who is Board-certified in internal medicine, examined and tested claimant and also diagnosed pneumoconiosis. Director's Exhibit 19. Dr. Ahluwalia, whose credentials are not of record, examined claimant twice, reviewed two negative x-ray readings, and diagnosed coronary artery disease and chronic obstructive pulmonary disease due to smoking. Director's Exhibits 11, 35, 41. Thus, each physician based his opinion on x-rays, examination findings, coal mine employment and smoking histories, and objective test results.

The administrative law judge accorded less weight to Dr. Kraynak's diagnosis because "he relie[d] on dubious chest x-ray evidence," and found Dr. Kruk's opinion to be "no more convincing . . . if the linchpin of his diagnosis of positive x-ray evidence is removed." Decision and Order 8-9. The administrative law judge did not further explain his reasoning. Thus, it is not clear why he believed that the chest x-ray readings relied upon by Dr. Kraynak were "dubious" or why he found that the physicians' reliance on positive x-rays

undercut the reliability of their opinions.[3] As the administrative law judge weighed the medical opinions in light of his finding at Section 718.202(a)(1), which is not affirmable, the administrative law judge's finding pursuant to Section 718.202(a)(4) must also be vacated and the case remanded for him to reweigh the medical opinions.

We note that the administrative law judge also questioned Dr. Kraynak's opinion because the physician relied on an exaggerated coal mine employment history. Decision and Order at 8; *see Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149 (1989)(*en banc*). Dr. Kraynak relied on ten years of coal mine employment in his written report, but at his deposition testified that he would still diagnose pneumoconiosis in this case assuming fewer years of coal mine employment because claimant reported no other dust exposure that would explain his findings on examination. Claimant's Exhibit 18 at 12, 18. The administrative law judge found that Dr. Kraynak "provid[ed] no rationale" for his conclusion. Decision and Order at 8. However, as claimant contends, the administrative law judge did not explain how he weighed the physician's testimony that the lack of any other hazardous dust exposure was the basis for his diagnosis of pneumoconiosis, even assuming fewer years of coal mine employment. Claimant's Brief at 6. The administrative law judge, as trier-of-fact, is not bound to accept the opinion of any particular medical witness or expert, but must explain fully why he finds one opinion more credible than another. *See Lafferty v. Cannelton Industries, Inc.* 12 BLR 1-190, 1-192 (1989); *Clark, supra*; *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). Therefore, if on remand the administrative law judge again analyzes the reasoning of the medical opinions based on the length of coal mine employment relied upon, he must further consider Dr. Kraynak's explanation for his conclusion.

In sum, the administrative law judge on remand must weigh all of the x-ray readings and reweigh the medical opinions pursuant to Section 718.202(a)(1), (3), and (4). The

[3] An administrative law judge may question the basis of a medical opinion where an x-ray relied upon by the physician is subsequently read negative by more highly-qualified readers. *See Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). However, an administrative law judge may not discredit a medical opinion merely because it relies on a positive x-ray interpretation, when the administrative law judge has found the weight of the x-ray evidence to be negative. *Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *see also Taylor v. Director, OWCP*, 9 BLR 1-22 (1986).

administrative law judge must weigh all items of evidence relevant to all of the methods of proof together to determine whether claimant has established the existence of pneumoconiosis. *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). If the administrative law judge determines that the existence of pneumoconiosis is established, he must then determine whether the pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(c) and whether the pneumoconiosis is a substantial contributor to claimant's total respiratory disability pursuant to Section 718.204(b). *See Bonessa v. United States Steel Corp*., 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge