BRB No. 98-0944 BLA

GEORGE KASKAN	)	
	)	
Claimant	)	
	)	
v.	)	
	)	
KASKAN COAL COMPANY	)	
	)	
and	)	
	)	
STATE WORKERS' INSURANCE FUND	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
	)	
Party-in-Interest/Respondent	)	DECISION AND ORDER

Appeal of the Decision and Order on Remand-Awarding Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for employer/carrier.

Jennifer U. Toth (Henry L. Solano, Solicitor of Labor; 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, United States Department of Labor.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order on Remand (96-BLA-0372) of Administrative Law Judge Daniel L. Leland awarding 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). This case is on appeal before the Board for a second time. In his initial Decision and Order, the administrative law judge accepted the stipulation of employer/carrier that claimant had twenty-six years of qualifying coal mine employment, and that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202, 718.203, and a material change in conditions pursuant to 20 C.F.R. §725.309. The administrative law judge then adjudicated this duplicate claim, filed on June 1, 1994, pursuant to the provisions at 20 C.F.R. Part 718, and found that claimant established total disability due to pneumoconiosis at 20 C.F.R. §718.204(b), (c). The administrative law judge also determined that claimant's last qualifying coal mine employment occurred while carrier insured employer. Accordingly, the administrative law judge awarded benefits to be paid by carrier.

On appeal, the Board affirmed the administrative law judge's finding that carrier was responsible for any payment of benefits, but vacated his finding that total respiratory disability was established at Section 718.204(c)(4), and remanded this case for further consideration of Dr. Goodman's opinion thereunder. *Kaskan v. Kaskan Coal Co.*, BRB No. 97-0405 BLA (Nov. 26, 1997)(unpublished).

On remand, the administrative law judge found that the weight of the evidence established total disability due to pneumoconiosis pursuant to Section 718.204(b), (c), and consequently awarded benefits.

In the present appeal, employer/carrier again challenge their designation as the responsible operator/carrier herein, and contend that the administrative law judge erred in finding total disability due to pneumoconiosis established at Section 718.204(b), (c)(4). The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, taking no position on the merits but urging affirmance of the administrative law judge's finding that employer/carrier are liable for any payment of benefits.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S.

359 (1965).

Employer initially contends that the administrative law judge erred in finding that claimant last worked as a "miner" in March 1980, while employer's policy coverage with carrier was still in effect, rather than until 1982, when employer was uninsured, and that the administrative law judge's findings were inadequately explained. We disagree. The Board previously rejected employer's arguments and affirmed the administrative law judge's finding that carrier was responsible for payment of any benefits to claimant. *See Kaskan v. Kaskan Coal Co.*, BRB No. 97-0405 BLA, slip op. at 2-3 (Nov. 26, 1997)(unpublished). Inasmuch as no exception to the law of the case doctrine has been demonstrated, we decline to revisit this issue. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990).

Employer next contends that the administrative law judge erred in relying on the opinion of Dr. Levine to support his finding that the weight of the evidence established total disability due to pneumoconiosis at Section 718.204(b), (c)(4). The Board, however, previously addressed and rejected employer's assertion that Dr. Levine's opinion is neither well-reasoned nor supported by its underlying documentation, *see Kaskan v. Kaskan Coal Co.*, BRB No. 97-0405 BLA, slip op. at 3-4 (Nov. 26, 1997)(unpublished), thus we again apply the law of the case and decline to readdress employer's arguments in this regard in the present appeal. *See Brinkley, supra*. Employer also maintains that the opinion of Dr. Goodman should have been accorded determinative weight, and that the administrative law judge mischaracterized this opinion. Employer's arguments are without merit. The administrative law judge accurately reviewed Dr. Goodman's opinion, noting that while the physician testified in his deposition that claimant was not totally disabled due to pneumoconiosis, Employer's Exhibit 3 at 16-17, the doctor did not affirmatively state that claimant had the respiratory capacity to perform his usual coal mine employment. Decision and Order on Remand at 2. Rather, Dr. Goodman diagnosed a cardiopulmonary impairment which would prevent claimant from performing his usual coal mine employment, Employer's Exhibit 3 at 25, but stated he needed more data in order to determine whether claimant was totally disabled by a respiratory impairment alone, Employer's Exhibit 3 at 20-21. The administrative law judge thus reasonably concluded that Dr. Goodman's opinion was equivocal at best regarding the extent of claimant's respiratory disability, Decision and Order on Remand at 2, *see generally Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986), and was entitled to little weight regarding the cause of disability because the physician found no coal dust related disease, which was contrary to the weight of the evidence and employer's concession that claimant has pneumoconiosis. Decision and Order at 7; Decision and Order on Remand at 3; *see generally Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). The administrative law judge acted within his discretion as

trier-of-fact in according determinative weight to the unequivocal opinion of Dr. Levine, which he found well-reasoned, corroborated by claimant's symptoms, and more probative than the non-qualifying pulmonary function studies and blood gas studies of record and the absence of cor pulmonale, as Dr. Levine relied on multiple factors, including abnormal findings on various objective tests, and his opinion was based on an overall evaluation of claimant's condition. Decision and Order on Remand at 3; *see generally Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge's findings pursuant to Section 718.204(b), (c)(4) are supported by substantial evidence and thus are affirmed. Consequently, we affirm the administrative law judge's finding that claimant is entitled to benefits.

Accordingly, the Decision and Order on Remand of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge