

BRB No. 99-0554 BLA

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| BRENDA RAY |) | |
| (On behalf of GUY RAY) |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| WILLIAMSON SHAFT |) | DATE ISSUED: |
| CONTRACTING COMPANY |) | |
| |) | |
| 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 on Disputed Medical Expenses of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Mary Lou Smith (Howe, Anderson & Steyer, P.C.), Washington, D.C., for employer.

Jill M. Otte (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 Disputed Medical Expenses (98-BMI-00001) of Administrative Law Judge Daniel F. Sutton 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).¹ The administrative law judge found that the Director, Office of Workers' Compensation Programs (the Director), successfully invoked the presumption enunciated by the United States Court of Appeals for the Fourth Circuit in *Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991), and that employer failed to produce any evidence to rebut that presumption.² Decision and Order at 12-13. The administrative law judge further concluded that even if the presumption enunciated in *Stiltner* were not applicable in the instant case, the Director affirmatively

¹ The miner filed a claim on August 2, 1979, Director's Exhibit 1, and was found entitled to benefits by the Department of Labor, Director's Exhibit 2. On July 30, 1992, Administrative Law Judge J. Michael O'Neill issued a Decision and Order awarding benefits, Director's Exhibit 4. Subsequent to an appeal by employer, the Board issued a Decision and Order in which it affirmed, in part, and vacated in part, Judge O'Neill's Decision and Order. Director's Exhibit 5; *Ray v. Williamson Shaft Contracting Co.*, BRB No. 92-2425 BLA (Nov. 1, 1993)(unpub.). The Board affirmed the award of benefits pursuant to 20 C.F.R. Part 727, but remanded the claim for further consideration of the onset of entitlement date. On remand, Judge O'Neill concluded, as he did in his first Decision and Order, that benefits were to commence as of August 1979, Director's Exhibit 6. Subsequent to an appeal by employer, the Board again affirmed the award of benefits, but modified the date upon which benefits were to commence to March, 1990. *Ray v. Williamson Shaft Contracting Co.*, BRB No. 94-2274 BLA (Jun. 22, 1995)(unpub.). Employer filed an appeal with the United States Court of Appeals for the Fourth Circuit, but then withdrew the appeal. Subsequently, the Department of Labor issued a "Supplemental Award of Benefits in which employer was ordered to reimburse the trust fund in the amount of \$86,491.82 for diagnostic and medical treatment expenses on the miner's behalf. Subsequently, Dr. Michael Sherman reviewed the entirety of evidence and concluded that employer was liable to the Trust Fund in the amount of \$78,037.08. Director's Exhibit 16. Employer reimbursed the Trust Fund for part of that amount, but challenged its liability for the remainder. Director's Exhibit 18. Subsequent to a hearing, the administrative law judge issued the Decision and Order on Disputed Medical Expenses from which employer now appeals. The instant appeal involves a dispute between the Director, Office of Workers' Compensation Programs and employer over medical expenses totaling \$55,228.32. Claimant's entitlement to benefits is a settled issue and is not germane to this appeal.

² When a miner receives treatment for a pulmonary disorder, a presumption arises that the disorder was caused or at least aggravated by the miner's pneumoconiosis, making the employer liable for the medical costs. In order to rebut the presumption, employer must show that the services rendered were not related to pneumoconiosis or were unnecessary for the treatment thereof.

established, through Dr. Sherman's opinion, that the miner's disputed medical treatment was related to coal workers' pneumoconiosis. Accordingly, the administrative law judge concluded that employer was liable for \$55,282.33 and ordered employer to reimburse the Black Lung Disability Trust Fund (the Trust Fund) in that amount for payments the Trust Fund previously made to the miner.

On appeal, employer contends that the miner's award of benefits was predicated exclusively on the operation of presumptions and that the miner never had to affirmatively establish the presence of totally disabling pneumoconiosis. Employer asserts that the instant case is different from *Stiltner, supra*, and its progeny inasmuch as the instant case is devoid of evidence linking the miner's impairment to coal mine employment. Employer further asserts that the underlying award of benefits is not sufficient, in and of itself, to turn all respiratory conditions into compensable disorders. Claimant and the Director both respond and urge affirmance of the administrative law judge's Decision and Order.

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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer asserts that the prior award of benefits in this case was based on presumptions and not an affirmative finding, *i.e.*, one supported by substantial evidence, that the miner was totally disabled due to pneumoconiosis. Thus, employer asserts that as the miner has not affirmatively carried his burden of proof in the "stage one" proceedings of this case, *i.e.*, establishing the elements of entitlement, the Director cannot demonstrate the compensability of the miner's expenses for medical treatment.³ Accordingly, employer asserts that the compensability of medical expenses has not been demonstrated pursuant to the standard enunciated in *Stiltner*.

³ In medical benefits only claims, claimant is required to establish entitlement to benefits and then to establish that the medical treatment provided is reasonable and necessary for the treatment of pneumoconiosis and ancillary pulmonary conditions. See 33 U.S.C. §907(A); 20 C.F.R. §725.701 *et seq.*; *Lute v. Split Vein Coal Co.*, 11 BLR 1-82 (1987).

We reject employer's characterization of the relevant law and hold that the administrative law judge has properly concluded that the award of benefits constituted a stage one finding sufficient to allow the Director to then produce evidence of compensable expenses for the miner's medical treatment. *See Stiltner, supra; see also Gulf & Western Industries v. Ling*, 176 F.3d 226, 21 BLR 2-570 (4th Cir. 1999); *General Trucking Corp. v. Salyers*, 175 F.3d 322, 21 BLR 2-565 (4th Cir. 1999). Contrary to employer's assertion, in establishing entitlement to benefits, pursuant to Part 727, a claimant must affirmatively invoke a presumption of total disability due to pneumoconiosis. *See* 20 C.F.R. §727.203(a)(1)-(4); *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988). Once invocation of the presumption is established, the party opposing entitlement may establish rebuttal through various methods. 20 C.F.R. §727.203(b)(1)-(4). In the instant case, the miner was previously found to have established invocation of the presumption through x-ray and blood gas study evidence pursuant to Section 727.203(a)(1) and (3), and the employer was found to have failed to establish rebuttal of the presumption. Accordingly, the miner was found to have affirmatively carried his burden of demonstrating entitlement to benefits. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). This finding of entitlement was affirmed by the Board. *Ray v. Williamson Shaft Contracting Co.*, BRB No. 92-2425 BLA (Nov. 1, 1993)(unpub.). Accordingly, we reject employer's assertion that the Director has failed to demonstrate that claimant affirmatively established entitlement to benefits.

Employer further contends that the opinion of Dr. Sherman fails to support the administrative law judge's conclusion that the miner's medical expenses are compensable as the physician's conclusions are based on "assumptions that bear no relationship" to this particular case. Employer's Brief 10. Employer asserts that the physician failed to consider the miner's mining experience in his determination that the miner had significant coal dust exposure. We reject employer's assertion and hold that the administrative law judge properly accorded dispositive weight to the opinion of Dr. Sherman.

Dr. Sherman thoroughly reviewed the entirety of the record of the miner's medical treatment and determined that specific expenses were compensable. Director's Exhibit 16. The physician assumed that inasmuch as the miner had significant exposure to coal mine dust, expenses related to the treatment of his chronic obstructive pulmonary disease were related to coal workers' pneumoconiosis. Director's Exhibit 16. The physician determined that such expenses totaled \$78,037.08, Director's Exhibit 16, a figure the administrative law judge reduced to \$55,282.32 based upon prior reimbursement by the employer to the Trust Fund, Decision and Order at 7 n.13. The administrative law judge permissibly concluded that the opinion of Dr. Sherman constituted a well-reasoned and documented opinion that the miner's medical treatment was related to coal workers' pneumoconiosis. *See Clark v. Karst-*

Robbins Coal Co., 12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Specifically, the administrative law judge determined that Dr. Sherman reasonably determined that the miner's exposure to coal dust was "significant" based upon a twenty-nine and one-half year coal mine employment history and that the record was devoid of any evidence proffered by employer to counter the conclusions reached by Dr. Sherman. Decision and Order at 13. Accordingly, we conclude that the administrative law judge has provided an affirmable basis for concluding that Dr. Sherman's medical opinion was credible and we affirm the determination that Dr. Sherman's opinion constituted dispositive evidence that the miner's expenses for medical treatment were related to coal workers' pneumoconiosis.⁴ See *Stiltner*, *supra*; see also *Ling*, *supra*; *Salyers*, *supra*.

⁴ In reaching this determination we need not address the applicability of the presumption enunciated in *Stiltner* as our disposition of this case is based on the Director's affirmative showing that the miner's medical expenses arose out of treatment for a pulmonary impairment due to coal mine employment. See *Stiltner*, *supra*; *Ling*, *supra*; *Salyers*, *supra*.

Accordingly, the administrative law judge's Decision and Order on Disputed Medical Expenses is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge