

BRB No. 07-0384 BLA

M.L.)
)
 Claimant-Respondent)
)
 v.)
)
 FLORENCE MINING COMPANY) DATE ISSUED: 02/28/2008
)
 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 Remand – Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Lindsey M. Sbrolla (Thompson, Calkins & Sutter), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand – Awarding Benefits (2003-BLA-5571) of Administrative Law Judge Michael P. Lesniak (the administrative law judge) 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 before the Board for the second time. Pursuant to employer’s last appeal, the Board affirmed the administrative law judge’s finding that the medical opinion evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), and that the evidence as a whole was sufficient to establish total disability pursuant to 20 C.F.R.

§718.204(b)(2)(i)-(iv).¹ The Board, however, remanded the case to the administrative law judge for reconsideration of the medical opinions of Drs. Schaaf and Pickerill on the issue of disability causation at 20 C.F.R. §718.204(c). The Board noted that the administrative law judge erred in finding that Dr. Schaaf's opinion was sufficient to support a finding of disability causation because the administrative law judge improperly focused on the doctor's opinion regarding the cause of claimant's shortness of breath and dyspnea rather than on the cause of claimant's totally disabling pulmonary impairment. The Board, therefore, vacated the administrative law judge's finding that disability causation was established and remanded the case. The Board directed the administrative law judge to address whether Dr. Schaaf's opinion was sufficient to establish that claimant's *total disability was due to pneumoconiosis*.² The Board also held that the administrative law judge erred in discrediting Dr. Pickerill's disability causation opinion solely because it was undermined by Dr. Pickerill's opinion on the *extent* of claimant's disability. The Board held that Dr. Pickerill's opinion regarding the *extent* of disability does not necessarily undermine the doctor's conclusion regarding the *cause* of disability. The Board, therefore, instructed the administrative law judge to reconsider the opinion of Dr. Pickerill on the issue of disability causation at Section 718.204(c).³

On remand, the administrative law judge found that Dr. Schaaf opined that claimant was totally disabled due to coal worker's pneumoconiosis and that his opinion on causation was sufficiently reasoned. The administrative law judge accorded less weight to Dr. Pickerill's opinion, that claimant was not disabled by pneumoconiosis, because he found that it was unconvincing. Accordingly, the administrative law judge found that disability causation was established under Section 718.204(c) on the basis of Dr. Schaaf's opinion.

¹ The Board noted the administrative law judge's findings that claimant had thirteen years of coal mine employment, that employer had stipulated that claimant suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and that claimant was entitled to the presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). [*M.L.*] v. *Florence Mining Co.*, BRB No. 04-0807 BLA (July 29, 2005) (unpub.).

² On deposition, Dr. Schaaf stated that claimant was precluded from performing his usual coal mine employment by coal workers' pneumoconiosis. Deposition at 26.

³ Dr. Pickerill stated that claimant's minimal degree of coal workers' pneumoconiosis would not be severe enough to prevent him from performing his usual coal mine employment. Director's Exhibit 14.

On appeal, employer contends that the administrative law judge improperly credited the opinion of Dr. Schaaf over the opinion of Dr. Pickerill to find disability causation established at 20 C.F.R. §718.204(c). Claimant responds in support of affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

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.⁴ 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).

After consideration of the arguments on appeal, the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order is rational, supported by substantial evidence, and consistent with applicable law. It must therefore, be affirmed. Contrary to employer's contention that the evidence of record does not support Dr. Schaaf's finding that pneumoconiosis was the cause of claimant's total respiratory disability, the administrative law judge properly found that Dr. Schaaf considered all the relevant evidence, including evidence of claimant's other conditions, findings on physical examination, symptoms, and the results of objective testing. The administrative law judge rationally found that Dr. Schaaf explained why he found that pneumoconiosis was a significant cause of claimant's total disability based on the evidence he reviewed.⁵ See Decision and Order on Remand at 3-5; Claimant's Exhibit 4 at 17-19; *Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Conversely, the administrative law judge rationally found the opinion of Dr. Pickerill, that claimant's pneumoconiosis was only a minimal, not a substantial,

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as the miner's coal mine employment occurred in Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 4.

⁵ Contrary to employer's assertion that the administrative law judge failed to address how claimant's smoking history and obesity played into his analysis of Dr. Schaaf's opinion, the administrative law judge found that Dr. Schaaf acknowledged claimant's significant smoking history and explained that, while it alone could potentially cause respiratory disability, he was convinced, given the evidence, that claimant's disability was due to pneumoconiosis. Decision and Order on Remand at 4. Likewise, the administrative law judge noted that, although Dr. Schaaf found obesity to be a factor in claimant's disability, the doctor nonetheless found pneumoconiosis, in light of the evidence, to be the main cause of claimant's disability.

contributor of claimant's totally disabling respiratory impairment, to be unconvincing because it was not supported by underlying documentation and the doctor made inconsistent findings on causation. Decision and Order on Remand at 4-5; Employer's Exhibit 4; *Clark*, 12 BLR at 1-155; *Lucostic*, 8 BLR at 1-47; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989). As the Board finds no reversible error in the administrative law judge's finding that Dr. Schaaf's opinion was well-reasoned and more convincing than the opinion of Dr. Pickerill, we affirm the administrative law judge's finding that disability causation was established at Section 718.204(c).

Accordingly, the administrative law judge's Decision and Order On Remand—Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge