

BRB No. 88-3024 BLA

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

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

Edward O. Falkowski (Marshall J. Breger, 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: STAGE, Chief Administrative Appeals Judge, DOLDER, Administrative Appeals Judge and LIPSON, Administrative Law Judge.*

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director) appeals the Decision and Order (84-BLA-8803) of Administrative Law Judge Michael H. Schoenfeld awarding benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine and Safety Act of 1969, as amended, 30 U.S.C. §901 et

seq. (the Act). Based on the date of filing, July 14,

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(Supp. V 1987).

1983, the administrative law judge adjudicated the claim pursuant to the permanent regulations found at 20 C.F.R. Part 718. After crediting claimant with seven and three quarters years of coal mine employment, the administrative law judge considered the evidence of record and determined that claimant established the existence of pneumo pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge then determined that claimant is totally disabled due to pneumoconiosis which arose out of his coal mine employment and is thus entitled to benefits under the Act.

On appeal, the Director argues that the administrative law judge failed to properly consider the medical opinion evidence of record pursuant to Section 718.204(c)(4).

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are in accordance with law. 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).

In making his determination as to claimant's entitlement, the administrative law judge made findings pursuant to 20 C.F.R. §§718.202 and 718.203. As these findings are not challenged on appeal they are affirmed. Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

The administrative law judge next addressed Section 718.204 and properly determined that claimant failed to establish total disability under Sections 718.204(c)(1)-(c)(3). The administrative law judge then considered the medical opinions of Drs. Weber, Mariglio, and Krol and determined that claimant established total disability. The administrative law judge found that while neither the report of Dr. Weber nor Dr. Mariglio constituted evidence of total disability, they did not "contradict Dr. Krol's specifically stated conclusion that claimant is unable to perform all of his prior coal mine duties." See Decision and Order at 8.

The Director argues on appeal that the administrative law judge failed to determine whether Dr. Krol's medical report is documented and reasoned, that the administrative law judge failed to consider whether Dr. Krol's opinion is unequivocal on the issue of claimant's ability to perform his usual coal mine employment, and that the administrative law judge failed to consider the medical report of Dr. Ahluwalia. In arguing that the administrative law judge failed to consider whether Dr. Krol's report is documented and reasoned, the Director states that Dr. Krol relied on an x-ray initially read as positive, but which was later re-read as negative by a more qualified physician. Further, the Director correctly states that the doctor relied on a pulmonary function study on which he noted: "Severe restriction in MVV probably effort related." see Director's Exhibit 33B, and he relied on an arterial blood gas study which he found to be normal. The results of these objective tests do not fully support Dr. Krol's conclusion that claimant can not do his usual coal mine duties. As

the administrative law judge failed to make a finding as to whether Dr. Krol's opinion is reasoned and documented, the case is remanded for the administrative law judge to make such a determination. See Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987). The Director next argues that Dr. Krol's statement that claimant's "[i]mpairment is mild. He probably could not perform all of his previous duties but could do some of them.", see Director's Exhibit 33, is equivocal. In his report, Dr. Krol includes a description of claimant's coal mine duties in claimant's own words. The duties are: "shovel coal, set-up timber, drilled, fired, drove gangway, slope, breast, etc." See Director's Exhibit 33. Upon considering the list of claimant's duties and Dr. Krol's statement regarding claimant's ability to perform these duties, it is impossible to determine which duties claimant could or could not perform and which duties claimant must perform in order to not be totally disabled. As the administrative law judge failed to discuss the equivocal nature of Dr. Krol's statement, the case is remanded for the administrative law judge to determine whether the opinion is sufficiently certain to support a finding of total disability. See Snorton v. Zeigler Coal Co., 9 BLR 1-106 (1986).

Further, the Director argues that the administrative law judge failed to consider the medical report of Dr. Ahluwalia (Director's Exhibit 36). In his report, Dr. Ahluwalia's diagnosis is: " normal cardiopulmonary examination (except for borderline cardiomegaly on CXR); normal arterial blood gas studies." See Director's Exhibit 36. As the administrative law judge must discuss and weigh all contrary

probative evidence, see Fields, supra; Shedlock v. Bethlehem Mines Corporation, 9 BLR 1-195 (1986), the case is remanded for the administrative law judge to discuss and weigh Dr. Ahluwalia's report, as well as all other contrary probative evidence of record.

Accordingly, the Board vacates the Decision and Order awarding benefits and remands the case for further consideration of the evidence under 20 C.F.R. §718.204(c)(4) consistent with this opinion.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

SHELDON R. LIPSON
Administrative Law Judge