BRB No. 89-2570 BLA

CECIL L. WILLIAMS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	DATE ISSUED:
	)	
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 of Henry W. Sayrs, Administrative Law Judge, United States Department of Labor.

Don M. Stacy, Beckley, West Virginia, for claimant.

Douglas A. Smoot and Ilene S. Schnall (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: STAGE, Chief Administrative Appeals Judge, DOLDER, Administrative Appeals Judge, and BONFANTI, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Decision and Order (87-BLA-2860) of Administrative Law Judge Henry W. Sayrs 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). The administrative law judge reviewed this

*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).

claim pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with forty-two years of qualifying coal mine employment. The administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (a)(4) and 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, benefits were awarded. On appeal, employer challenges the administrative law judge's findings pursuant to Sections 718.202(a)(1), (a)(4), and 718.204, and contends that the administrative law judge erred in failing to consider the invocation and rebuttal provisions of the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305. Claimant responds, urging affirmance. The Director, Office of Workers' Compensation

Programs, has not participated in this appeal.[1]

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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

[1] The administrative law judge's finding that the evidence of record was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1) and (c)(3), and his findings with regard to the length of coal mine employment, are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

Employer first contends that the administrative law judge, in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(1), failed to adequately weigh the x-ray evidence of record. We agree. The administrative law judge reviewed all of the x-ray evidence of record and found that inasmuch as some B-readers interpreted several of the films as positive for pneumoconiosis, including some of the most current and probative films, the evidence was contradictory and thus claimant was entitled to the benefit of the doubt pursuant to 20 C.F.R. §718.3. As employer notes, however, the "true doubt" rule is not appropriate unless the administrative law judge first determines that the contradictory evidence is equally probative. See Roberts v. Bethlehem Mines Corp., 8 BLR 1-211 (1985); Kozele v. Rochester & Pittsburgh Coal Co., 6 BLR 1-378 (1983). Moreover, where x-ray evidence is conflicting, the administrative law judge is required to consider the full radiological qualifications of the readers.[2] 20 C.F.R. §718.102. See Melnick v. Consolidation Coal Co., 16 BLR 1-31 (1991); Roberts, supra. Consequently, we must vacate the administrative law judge's findings pursuant to Section 718.202(a)(1), and remand this case for the administrative law judge to reconsider the evidence thereunder, assign appropriate weight thereto, and provide a rationale for his findings which comports with the requirements of the Administrative

[2] We note that in reviewing the x-ray evidence of record, the administrative law judge identified the physicians of record with B-reader status, but did not acknowlege those physicians who possess dual qualifications as B-readers and Board-certified radiologists. Decision and Order at 5-7.

Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d), 30 U.S.C. §932(a).

Employer also contends that the administrative law judge, in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(4), failed to properly weigh the medical opinions of record. We agree. The administrative law judge merely found that this evidence was contradictory, and again resolved the conflict in claimant's favor, without any discussion of the weight to be accorded the relevant evidence. Decision and Order at 7, 8; see generally Burns v. Director, OWCP, 7 BLR 1-597 (1984); Kozele, supra. We therefore vacate the administrative law judge's findings pursuant to Section 718.202(a)(4), for the administrative law judge, on remand, to address the evidence thereunder, and provide his rationale in compliance with the terms of the APA.[3]

[3] If, on remand, the administrative law judge determines that claimant has established the existence of pneumoconiosis, the administrative law judge's finding pursuant to Section 718.203, that claimant's pneumoconiosis arose out of coal mine employment, is affirmed as unchallenged on appeal. Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

Turning to the issue of total disability pursuant to Section 718.204(c), employer contends that the administrative law judge mechanically accorded greater weight to the most recent evidence, and therefore erred in finding that the blood gas study evidence of record was sufficient to establish the existence of a totally disabling respiratory impairment pursuant to Section 718.204(c)(2). We disagree. The administrative law judge properly reviewed all of the blood gas study evidence of record and found that two studies from 1981 and 1982 produced non-qualifying values; that the resting values of tests taken on June 5, 1980, and November 3, 1981, were non-qualifying, but the exercise values of those tests were qualifying; and that the most current studies of November 17, 1988, and November 28, 1988, produced qualifying values and were the most probative, as pneumoconiosis is a progressive disease.[4] Decision and Order at 9; see generally Sexton v. Southern Ohio Coal Co., 7 BLR 1-411 (1984); Keen v. Jewell Ridge Coal Corp., 6 BLR 1-454 (1983). Consequently, the administrative law judge reasonably found that the weight of the blood gas study evidence of record was sufficient to establish total disability pursuant to Section 718.204(c)(2), and we affirm the administrative law judge's findings thereunder as supported by substantial evidence.

[4] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those values.

Employer additionally maintains that the administrative law judge, in evaluating the medical opinions of record pursuant to Section 718.204(c)(4), failed to adequately analyze the underlying documentation or review the qualifications of the physicians. We agree. Although the administrative law judge is not required to accord greater weight to the opinion of a physician with superior credentials, the relative qualifications of physicians is a relevant consideration in weighing conflicting medical opinions. See generally Martinez v. Clayton Coal Co., 10 BLR 1-24 (1987); Wetzel v. Director, OWCP, 8 BLR 1-139 (1985); Massey v. Eastern Associated Coal Corp., 7 BLR 1-37 (1984); Kozele, supra. Further, employer correctly notes that while the finding of a state workers' compensation board on the extent of claimant's respiratory impairment is relevant evidence which must be discussed, it is not binding on the administrative law judge. Miles v. Central Appalachian Coal Co., 7 BLR 1-744 (1985); Dalton v. Eastern Associated Coal Corp., 4 BLR 1-1 (1982). In the instant case, in finding total disability established, the administrative law judge accepted the 1981 findings of the Occupational Pneumoconiosis Board of West Virginia that claimant had a 30% pulmonary function impairment attributable to pneumoconiosis without first assessing the physical requirements of claimant's usual coal mine employment, or determining the legal and medical criteria the state board relied upon in reaching its finding. Decision and Order at 10, 11; Director's Exhibit 4; see Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987). We therefore vacate the administrative law judge's findings pursuant to Section 718.204(c)(4). On remand,

the administrative law judge must reconsider the medical opinions of record, provide an analysis for his credibility determinations, and then weigh all relevant probative evidence, like and unlike, and determine whether the evidence is sufficient to establish total disability pursuant to Section 718.204(c). See Fields, supra; Shedlock v. Bethlehem Mines Corp., 9 BLR 1-195 (1986). If, on remand, the administrative law judge determines that claimant has established a totally disabling respiratory impairment, then the administrative law judge must separately determine whether this impairment is due to pneumoconiosis. See Robinson v. Pickands, Mather & Co., 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). In this respect, as this claim was filed prior to January 1, 1982, the administrative law judge should determine whether the presumption at 20 C.F.R. §718.305 is applicable. See Wagahoff v. Freeman United Coal Mining Co., 10 BLR 1-100 (1987), Tanner v. Freeman United Coal Co., 10 BLR 1-85 (1987).

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

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

RENO E. BONFANTI
Administrative Law Judge