

BRB No. 98-1244 BLA

HARRIS WALLACE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:
THE PITTSBURGH & MIDWAY COAL	)	
MINING COMPANY	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	

Appeal of the Decision and Order, Order on Reconsideration, and Supplemental Decision and Order of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Michael E. Bevers (Nakamura & Quinn, LLP), Birmingham, Alabama, for claimant.

John W. Hargrove (Bradley, Arent, Rose, & White LLP), Birmingham, Alabama, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order, Order on Reconsideration, and Supplemental Decision and Order (97-BLA-0418) of Administrative Law Judge Gerald M. Tierney awarding benefits and an attorney's fee 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). Claimant's initial application for benefits filed on April 20, 1990 was granted by Administrative Law Judge Thomas

Schneider, who found that claimant was totally disabled due to pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), 718.203(b), and 718.204. Director's Exhibit 24. Pursuant to employer's appeal, the Board vacated the administrative law judge's decision in part and remanded the case for him to reconsider the disability evidence pursuant to Section 718.204. *Wallace v. The Pittsburgh & Midway Coal Mining Company*, BRB No. 92-1156 BLA (Sep. 17, 1992)(unpub.). On remand, the administrative law judge found that total respiratory disability was not established pursuant to Section 718.204(c) and, accordingly, denied benefits. Director's Exhibit 24.

On December 26, 1995 claimant filed the present application for benefits which is a duplicate claim because it was filed more than one year after the previous denial. Director's Exhibit 1; see 20 C.F.R. §725.309(d). Administrative Law Judge Gerald M. Tierney found that claimant established both a material change in conditions<sup>1</sup> and entitlement to benefits because the evidence established that he is totally disabled due to pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a)(4), 718.203(b), and 718.204. Accordingly, he awarded benefits. Employer moved for reconsideration, which the administrative law judge denied. Subsequently, the administrative law judge granted claimant's

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<sup>1</sup> The administrative law judge found that a material change in conditions was established under both the Board's standard set forth in *Shupink v. LTV Steel Co.*, 17 BLR 1-24 (1992) and under the standard set forth by the United States Court of Appeals for the Sixth Circuit in *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLA 2-10 (6th Cir. 1994). The United States Court of Appeals for the Eleventh Circuit, within whose jurisdiction this case arises, has not yet issued a material change in conditions test. Employer does not challenge the administrative law judge's use of the *Shupink* or *Ross* standards.

counsel's request for an attorney's fee.

On appeal, employer contends that the administrative law judge erred in his weighing of the medical evidence pursuant to Sections 718.202(a)(4) and 718.204. Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.<sup>2</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. § 921(b)(3), as incorporated into the Act by 30 U.S.C. § 932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

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<sup>2</sup> We affirm as unchallenged on appeal the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1)-(3), 718.203(b), and 718.204(c)(1)-(3), and his fee award of \$1,831.25. See *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The administrative law judge found that, although the weight of the x-ray evidence did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), the uncontradicted<sup>3</sup> medical opinion of a Board-certified internist and pulmonologist who examined and tested claimant established that claimant suffers from pneumoconiosis pursuant to Section 718.202(a)(4). Specifically, Dr. Louis Pappas opined, based upon work, medical, and smoking histories, chest x-ray, and the presence of obstructive and restrictive abnormalities on pulmonary function testing, that claimant suffers from emphysema due to smoking and pneumoconiosis due to coal dust exposure. Director's Exhibits 6, 7. Additionally, based upon his examination and testing, Dr. Pappas concluded that claimant is "completely disabled due to respiratory illness, equal parts pneumoconiosis and COPD." Director's Exhibit 7.

The administrative law judge deferred to Dr. Pappas's uncontradicted diagnosis and disability rating based upon his medical credentials and because he examined claimant twice and "provided rationale and documentation to support his conclusion." Decision and Order at 4, 6. The administrative law judge then weighed Dr. Pappas's disability opinion against the contrary probative evidence pursuant to Section 718.204(c), see *Jordan v. Benefits Review Board*, 876 F.2d 1455, 1461, 12 BLR 2-371, 2-375 (11th Cir. 1989); *Beatty v. Danri Corporation and Triangle Enterprises*, 16 BLR 1-11 (1991), *aff'd* 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), and found that Dr. Pappas's opinion outweighed the pulmonary function and blood gas study evidence, which the administrative law judge had found insufficient to establish disability at Section 718.204(c)(1) and (c)(2). In so doing, the administrative law judge explained that he found Dr. Pappas's opinion to be a "more reliable indicator of total disability," because it was "based on a totality of factors--not just whether isolated test results [met] a numeric criteri[on]. . . ." Decision and Order at 6. Finally, the administrative law judge found that Dr. Pappas's opinion established that pneumoconiosis substantially contributes to claimant's total disability pursuant to Section 718.204(b). Decision and Order at 6; see *Black Diamond Coal Mining Co. v. Director, OWCP [Marcum]*, 95 F.3d 1079, 20 BLR 2-325 (11th Cir. 1996); *Lollar v. Alabama By-Products Corp.*, 893 F.2d 1258, 13 BLR 2-277 (11th Cir. 1990).

Employer contends that the administrative law judge should have rejected Dr. Pappas's opinion as undocumented and unreasoned because, employer asserts, it is inconsistent with the objective evidence of record as weighed by the administrative law judge. Employer's Brief at 3-5. Employer therefore urges us to reverse the

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<sup>3</sup> Employer submitted no medical opinion evidence in this claim.

administrative law judge's determination that claimant suffers from pneumoconiosis and is totally disabled due to pneumoconiosis. *Id.*

“A 'documented' report sets forth the clinical findings, observations, facts, etc., on which the doctor has based his diagnosis,” *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987), and a reasoned medical opinion rests on documentation adequate to support the physician's conclusions. *Migliorini v. Director, OWCP*, 898 F.2d 1292, 1295, 13 BLR 2-418, 2-423 (7th Cir. 1990); *Fields*, 10 BLR at 1-22. An administrative law judge exercises broad discretion in determining whether a medical opinion is well-reasoned. See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993).

Contrary to employer's contention, the administrative law judge acted within his discretion in finding Dr. Pappas's opinion adequately documented and reasoned. See *Trumbo, supra*. Dr. Pappas set forth the factors upon which he based his diagnosis, indicating that claimant's mixed obstructive and restrictive ventilatory impairment, when considered in light of his chest x-rays,<sup>4</sup> coal mine employment history, and smoking history, supported the diagnosis of emphysema and pneumoconiosis. Director's Exhibits 6, 7; see *Migliorini, supra*; *Fields, supra*. Although the administrative law judge found that the weight of the x-ray readings did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), he was not required to reject Dr. Pappas's medical opinion for that reason, as employer suggests. See 20 C.F.R. §§718.202(a)(4); 718.202(b); *Stomps v. Director, OWCP*, 816 F.2d 1533, 1535, 10 BLR 2-107, 2-109 (11th Cir. 1987); *Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996). Additionally, the administrative law judge's finding that the weight of the pulmonary function study evidence did not establish total disability at Section 718.204(c)(1) does not automatically negate Dr. Pappas's medical reasoning that the two pulmonary function studies he administered revealed obstructive and restrictive abnormalities of diagnostic significance. See generally *McClendon v. Drummond Coal Co.*, 861 F.2d 1512, 1514, 12 BLR 2-108, 2-109 (11th Cir. 1988)(administrative law judge may rely upon the opinion of a physician who exercises sound medical judgment based on objective medical evidence). Therefore, we reject employer's contention that the administrative law judge erred by finding Dr. Pappas's opinion to be a documented and reasoned medical opinion pursuant to Sections 718.202(a)(4) and 718.204(c)(4).

Employer next argues that Dr. Pappas's opinion merited no weight because he failed to explain why claimant's respiratory problems were not caused by

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<sup>4</sup> Dr. Pappas reported that the two x-rays he took revealed emphysema, pleural thickening, and interstitial markings. Director's Exhibits 6, 7.

emphysema, cotton dust exposure, or an old gunshot wound to the chest. Employer's Brief at 3. Contrary to employer's contention, Dr. Pappas did not ignore the role of emphysema in claimant's respiratory condition; he in fact attributed claimant's obstructive abnormality to emphysema caused by smoking. Director's Exhibit 6, 7. However, Dr. Pappas also believed that based on claimant's coal mine employment history and chest x-ray, his additional restrictive abnormality was indicative of pneumoconiosis. *Id.* Furthermore, Dr. Pappas knew that claimant worked in a cotton mill during the 1970's and suffered a gunshot wound to the right upper chest area in 1984. Director's Exhibit 6, 7. Nevertheless, Dr. Pappas explained why he believed that claimant's respiratory problems were related to smoking and coal dust exposure. Director's Exhibits 6, 7; see *Fields, supra*. Review of the record reveals no information regarding claimant's dust exposure, if any, during his employment in a cotton mill, nor does the record contain any medical evidence suggesting that claimant suffers respiratory problems as a result of his old gunshot wound. Director's Exhibits 20, 24 (treating physician's office notes, hospitalization records). Under these circumstances, the administrative law judge reasonably deferred to Dr. Pappas' opinion. See *Trumbo, supra*. Therefore, we reject employer's contention.

Finally, employer argues that Dr. Pappas's opinion is too equivocal to constitute substantial evidence of either pneumoconiosis or total respiratory disability. Employer's Brief at 4. This contention lacks merit. Dr. Pappas submitted three reports and two letters setting forth his examination findings and explaining his conclusions. Director's Exhibits 6, 7. Dr. Pappas stated clearly throughout these reports that claimant has pneumoconiosis and is disabled by it.<sup>5</sup> Therefore, we reject employer's contention that the administrative law judge was bound to reject Dr. Pappas's opinion as equivocal.<sup>6</sup>

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<sup>5</sup> Examples include: "It is my medical opinion with a strong degree of medical certainty, that he, in fact, does have pneumoconiosis as well as pulmonary emphysema." Director's Exhibit 6, January 18, 1996. "It is my strong feeling that he has severe pulmonary disability based on both problems . . . ." Director's Exhibit 6, October 12, 1995. "COPD. Pneumoconiosis. . . . Patient completely disabled due to respiratory illness, equal parts pneumoconiosis and COPD." Director's Exhibit 7, January 30, 1996.

<sup>6</sup> Employer also faults Dr. Pappas for failing to conduct an exercise blood gas study. Employer's Brief at 5. However, Dr. Pappas reported that claimant "was unable to do exercise studies because of back pain and arthritis in his hips." Director's Exhibit 6.

The administrative law judge permissibly deferred to Dr. Pappas's opinion based upon his qualifications, see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-154 (1989)(*en banc*), and because he had the benefit of examining and testing claimant twice. See *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986)(administrative law judge may consider how complete a picture of the miner's health was available to a physician). The Board is not empowered to reweigh the evidence, see *Anderson, supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988), and substantial evidence supports the administrative law judge's findings. Therefore, we affirm the administrative law judge's findings pursuant to Sections 718.202(a)(4), 718.204, and 725.309(d).

Accordingly, the administrative law judge's Decision and Order, Order on Reconsideration, and Supplemental Decision and Order awarding benefits and an attorney's fee are affirmed.

SO ORDERED.

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JAMES F. BROWN  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge