BRB No. 07-0494 BLA

R.F.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
RAMBLIN COAL COMPANY, INCORPORATED	)	DATE ISSUED: 03/28/2008
	)	
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 Award of Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams & Rutherford), Norton, Virginia, for claimant.

James M. Kennedy (Baird & Baird), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Award of Benefits (04-BLA-6414) of Administrative Law Judge Daniel F. Solomon on a claim filed on August 27, 2002, 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 accepted the parties' stipulation that claimant worked for twenty-four years in coal mine

employment,[1] found that the claim had been timely filed pursuant to 20 C.F.R. §725.308(c), and found that employer was the responsible operator pursuant to 20 C.F.R. §725.495(c)(2). On the merits, the administrative law judge found that the x-ray evidence did not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge also found, however, that claimant established the existence of legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.204(b)(2), 718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's weighing of the medical opinion evidence pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(c). Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[2]

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. 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).

Relevant to 20 C.F.R. §718.202(a)(4), employer maintains that the administrative law judge erred in crediting the opinions of Drs. Rasmussen and Ammisetty over the contrary opinions of Drs. Fino and Broudy. Employer's Brief at 13, 16-17. Specifically,

[1] The law of the United States Court of Appeals for the Sixth Circuit is applicable, as the miner was employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

[2] We affirm, as unchallenged on appeal, the administrative law judge's findings that the claim was timely filed pursuant to 20 C.F.R. §725.308(c), that employer is the responsible operator at 20 C.F.R. §725.495(c)(2), and that claimant established total disability pursuant to §718.204(b)(2), and twenty-four years of qualifying coal mine employment. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

employer asserts that the administrative law judge did not adequately explain his finding that the opinions of Drs. Rasmussen and Ammisetty were well-reasoned, and argues that the administrative law judge failed to provide valid reasons for discrediting the opinions of Drs. Fino and Broudy. Employer's Brief at 11-17.

Employer's assertions of error have merit. In finding the opinions of Drs. Ammisetty and Rasmussen diagnosing legal pneumoconiosis to be reasoned and entitled to probative weight, the administrative law judge stated:

> Dr. Rasmussen offered extensive research to support his opinion. No other research is offered [by the physicians]. . . .
>
> After a review of the evidence, I find that Dr. Rasmussen's report is well documented and the best reasoned of the other reports. I also find that Dr. Ammisetty's report is well document[ed] and well reasoned. I accept that although Dr. Rasmussen relied in part on the positive x-ray, which I discredit, and I do not accept that clinical pneumoconiosis has been proved. But the evidence shows to a reasonable degree of certainty that the [c]laimant has proved the existence of legal pneumoconiosis.

Decision and Order at 8-9.

We agree with employer that the administrative law judge's Decision and Order does not reflect that he gave proper consideration to whether the opinions of Drs. Rasmussen and Ammisetty were sufficiently reasoned to satisfy claimant's burden of proof. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 5-6; *see generally Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986). The administrative law judge provided no basis for finding Dr. Ammisetty's opinion well-reasoned, and in crediting Dr. Rasmussen's diagnosis he failed to discuss how the research cited supported the doctor's opinion that claimant's obstructive disease, in this particular case, was related to coal dust exposure. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Tenney v. Badger Coal Co.*, 7 BLR 1-589, 1-591 (1984); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984); *Rowe v. Director, OWCP*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

Further, we agree with employer that the administrative law judge's findings regarding the opinions of Drs. Fino and Broudy are not supported by substantial evidence. In discrediting the opinions of Drs. Fino and Broudy, that claimant's obstructive lung disease is unrelated to coal mine employment, the administrative law judge stated:

> There are three fatal flaws in [Dr. Fino's] reasoning as follows. First, I find Dr. Fino's explanation is not rational based on the symptoms noted in the [c]laimant's testimony, and in the reports of Drs. Ammisetty and Rasmussen[,] are those generally consistent with pneumoconiosis. Second, because he failed to state what symptoms or findings would be required to prove legal pneumoconiosis. I find that Dr. Fino's logic is an example of *ipse dixit*, something that is asserted but unproved. Third, I also find that Dr. Fino's rationale actually goes to whether total disability was caused by pneumoconiosis rather than whether pneumoconiosis exists in this record, given that 24 years of exposure is accepted.
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> Dr. Ammisetty diagnosed chronic obstructive pulmonary disease (COPD), [and] chronic bronchitis. Dr. Rasmussen states that a reduced diffusing capacity exhibited on testing is important to show that coal dust had an impact, which may indicate restrictive airway disease, but he also found COPD. Although Dr. Broudy emphasized only restrictive airway disease, even Dr. Fino found chronic obstructive pulmonary disease. The record substantiates that the [c]laimant is medicated with bronchodilators and inhalers. The preponderance of the evidence supports Dr. Rasmussen's diagnosis of both restrictive and obstructive disease. Therefore, I accord less weight to Dr. Broudy's opinions.
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> . . . In his deposition, Dr. Fino testified that he relied on the readings of the CT scans to conclude that the Claimant has bullous emphysema, which will not occur as a result of coal dust. . . . [CT scans] go only to clinical pneumoconiosis and not to legal pneumoconiosis. Therefore, I find that Dr. Fino's logic is flawed and discount his opinion.

Decision and Order at 8-9.

With respect to Dr. Fino's opinion, employer asserts that, in finding claimant's symptoms to be "those generally consistent with pneumoconiosis," the administrative law judge did not identify a basis for this conclusion in the medical opinion evidence of record. Employer's Brief at 13-14. We agree. Although the weighing of the evidence is for the administrative law judge, the interpretation of the medical data is for the medical experts. *See Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987). In this case, the administrative law judge erred in stating, without supporting medical evidence, that claimant's symptoms were consistent with pneumoconiosis. *See Marcum*, 11 BLR at 1-24. Employer additionally asserts that, contrary to the administrative law judge's findings, Dr. Fino's opinion is probative as to the existence of legal pneumoconiosis, and that the administrative law judge erred in failing to consider the entire underlying basis of the physician's opinion. Employer's Brief at 16-17. We agree. An administrative law

judge must consider all relevant evidence. 30 U.S.C. §923(b). A review of the record shows that Dr. Fino opined that the miner's COPD is consistent with a smoking-related disability, rather than a coal mine dust-related condition. Employer's Exhibits 1, 2. Further, in addition to a CT scan showing that claimant suffered from a type of emphysema secondary to smoking, Dr. Fino based his opinion on the FEV1 values of claimant's pulmonary function test and the fact that the great majority of claimant's coal mine employment took place after dust regulations were enacted. Employer's Exhibits 1, 2, 3 at 15-16. Therefore, substantial evidence does not support the administrative law judge's analysis of Dr. Fino's opinion. *See Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-297 (1984).

Employer further asserts that the administrative law judge mischaracterized Dr. Broudy's opinion. We agree. As employer correctly points out, contrary to the administrative law judge's findings, Dr. Broudy diagnosed COPD and neither diagnosed, nor emphasized, restrictive airway disease. Employer's Brief at 17; Employer's Exhibit 4. Thus, substantial evidence does not support the administrative law judge's analysis of Dr. Broudy's opinion.

For the above-stated reasons, we vacate the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(4) and remand the case for further consideration of the medical opinion evidence. In light of this holding, we also vacate the administrative law judge's finding that claimant's total disability is due to pneumoconiosis under 20 C.F.R. §718.204(c). If, on remand, the administrative law judge finds that the evidence establishes the existence of pneumoconiosis under Section 718.202(a), he must then reconsider the evidence under Section 718.204(c). *See Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 610-611, 22 BLR 2-288, 2-303 (6th Cir. 2001).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge