

BRB No. 07-0741 BLA

D.D. )  
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 Claimant-Respondent )  
 )  
 v. )  
 )  
 ISLAND CREEK COAL COMPANY )  
 ) DATE ISSUED: 05/30/2008  
 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 – Awarding Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Robert F. Cohen, Jr. (Cohen, Abate & Cohen, L.C.), Morgantown, West Virginia, for claimant.

William S. Mattingly (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2005-BLA-5430) of Administrative Law Judge Daniel L. Leland 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 credited the miner with twenty-six years and three months of qualifying coal mine employment, and adjudicated this claim, filed on November 19, 2002, pursuant to the regulatory provisions at 20 C.F.R. Part 718. The administrative law judge determined that employer stipulated that claimant has a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b), and found the evidence sufficient to establish legal pneumoconiosis

pursuant to 20 C.F.R. §718.202(a)(4), and disability causation pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were awarded.

On appeal, employer challenges the administrative law judge's findings that the evidence was sufficient to establish the existence of legal pneumoconiosis at Section 718.202(a)(4) and disability causation at Section 718.204(c). Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a response.

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.<sup>1</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence, consistent with applicable law, and contains no reversible error. In finding the weight of the evidence sufficient to establish the existence of legal pneumoconiosis at Section 718.202(a)(4), the administrative law judge accurately summarized the conflicting medical opinions of record. Decision and Order at 3-6. The administrative law judge determined that all of the physicians diagnosed a totally disabling chronic obstructive pulmonary disease (COPD), and that Drs. Jaworski, Parker and Cohen attributed the disease to both smoking and coal dust exposure, whereas Drs. Renn and Rosenberg opined that it resulted solely from smoking. Decision and Order at 6; Director's Exhibits 15, 17, 18, 19, 37; Claimant's Exhibit 4; Employer's Exhibits 2, 5, 8, 11. The administrative law judge acknowledged that all of the physicians are Board-certified in pulmonary diseases, but he permissibly accorded greater weight to the opinions of Drs. Cohen and Parker based on their superior expertise and relevant professional experience with associated research in the area of coal workers' pneumoconiosis. Decision and Order at 6-7, *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge additionally determined that Drs. Parker and Cohen provided well-reasoned and persuasive explanations for their conclusion that claimant's COPD was attributable to both smoking and coal dust exposure. Decision and Order at 7; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The doctors' Board-certifications in this case are

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<sup>1</sup> The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as the miner was last employed in the coal mining industry in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 5.

similar, as noted by the administrative law judge, and we find no selective analysis of the evidence in the administrative law judge's acknowledgment of the relevant professional positions held by, and the research and numerous publications attributable to, Drs. Cohen and Parker in the field of occupational diseases of coal miners. *Id.* Also, contrary to employer's assertion, Drs. Cohen and Parker did not assume a causality presumption based on employment alone, but relied on reported studies and publications as well as objective and historical data relating to claimant, and an analysis of his symptoms. Decision and Order at 7; Claimant's Exhibit 4; Employer's Exhibit 2. Further, in finding legal pneumoconiosis established, the administrative law judge correctly did not apply the ten-year presumption of causality at 20 C.F.R. §718.203(b); thus, we reject employer's allegation that the administrative law judge erred in failing to discuss whether that presumption can apply to a diagnosis of COPD to establish legal pneumoconiosis. Employer's Brief at 21; *see generally Andersen v. Director, OWCP*, 455 F.3d 1102, 23 BLR 2-332 (10th Cir. 2006). As substantial evidence supports the administrative law judge credibility determinations, we affirm his finding of legal pneumoconiosis at Section 718.202(a)(4).

At Section 718.204(c), because Drs. Renn and Dr. Rosenberg did not diagnose pneumoconiosis, in direct contradiction to the administrative law judge's finding that legal pneumoconiosis was established, the administrative law judge permissibly discredited their opinions that smoking was the sole cause of claimant's disabling respiratory impairment. Decision and Order at 7-8; *see Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002). The administrative law judge properly relied on the unequivocal opinions of Drs. Cohen and Parker, that both smoking and coal dust exposure were contributing causes of claimant's disabling respiratory impairment, to support his finding that the evidence established disability causation at Section 718.204(c), and we affirm his findings thereunder as supported by substantial evidence. Consequently, we affirm the administrative law judge's award of benefits.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge