

BRB No. 09-0698 BLA

DOUGLAS COLE )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 WAMPLER BROTHERS COAL )  
 COMPANY, INCORPORATED )  
 )  
 and )  
 )  
 OLD REPUBLIC INSURANCE COMPANY ) DATE ISSUED: 05/18/2010  
 )  
 Employer/Carrier- )  
 Petitioners )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order on Remand of Janice K. Bullard,  
Administrative Law Judge, United States Department of Labor.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for  
employer/carrier.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals  
Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (04-BLA-6164) of  
Administrative Law Judge Janice K. Bullard rendered on a claim filed pursuant to the  
provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by*  
Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C.

§§921(c)(4) and 932(l)) (the Act).<sup>1</sup> This case involves a subsequent claim<sup>2</sup> filed on November 12, 2002, and is before the Board for the second time.

In the initial decision, dated July 31, 2007, the administrative law judge credited claimant with 13.21 years of coal mine employment<sup>3</sup> and found that the medical evidence developed since the prior denial of benefits established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge therefore found that claimant demonstrated a change in an applicable condition of entitlement as required by 20 C.F.R. §725.309(d). Reviewing the entire record, the administrative law judge found that the evidence established the existence of legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) and chronic bronchitis due, in part, to coal dust exposure, at 20 C.F.R. §718.202(a)(4). The administrative law judge further found that claimant established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv), but failed to establish that pneumoconiosis was a substantially contributing cause of his totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

Pursuant to claimant's appeal, the Board initially rejected employer's challenges to the administrative law judge's finding of legal pneumoconiosis under 20 C.F.R. §718.202(a)(4). The Board held that the administrative law judge acted within her discretion in crediting Dr. Baker's diagnosis of legal pneumoconiosis as both uncontradicted, and partially supported by, Dr. Jarboe's opinion. The Board therefore affirmed the administrative law judge's finding that claimant established the existence of legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §718.202(a)(4), and thus established a change in an applicable condition of entitlement

---

<sup>1</sup> The recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to the instant case, because claimant's current claim was filed before January 1, 2005.

<sup>2</sup> Claimant's prior claim, filed on March 1, 1991, was finally denied on August 26, 1991, because claimant failed to establish any element of entitlement. Director's Exhibit 2. Claimant took no further action until filing the instant claim on November 12, 2002. Director's Exhibit 4.

<sup>3</sup> The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mining industry in Kentucky. Director's Exhibit 5; see *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

pursuant to 20 C.F.R. §725.309(d). *D.M.C. [Cole] v. Wampler Brothers Coal Co.*, BRB No. 07-0969 BLA, slip op. at 5 (Aug. 28, 2008) (unpub.).

The Board next addressed the contention of the Director, Office of Workers' Compensation Programs (the Director), that, in failing to find disability causation established under 20 C.F.R. §718.204(c), the administrative law judge erred in her evaluation of Dr. Baker's opinion. The Board agreed with the Director that since the administrative law judge found total disability established, she did not adequately explain how Dr. Baker's failure to clarify whether claimant's moderate impairment was totally disabling undermined the physician's separate conclusion that claimant's respiratory impairment is contributed to "fully" by clinical and legal pneumoconiosis, as well as ischemic heart disease. *Cole*, BRB No. 07-0969 BLA, slip op. at 6. Further, the Board agreed with the Director that, contrary to the administrative law judge's finding, Dr. Baker addressed the effects of smoking on claimant's respiratory impairment, by stating that both smoking and coal dust exposure contributed to claimant's COPD and chronic bronchitis. *Id.* Therefore, the Board vacated the administrative law judge's finding that claimant failed to establish that he is totally disabled due to pneumoconiosis under 20 C.F.R. §718.204(c). Consequently, the Board remanded the case for further consideration of the medical opinion evidence pursuant to 20 C.F.R. §718.204(c).<sup>4</sup> *Cole*, BRB No. 07-0969 BLA, slip op. at 7.

On remand, the administrative law judge found that Dr. Baker's opinion was adequately reasoned and documented, and that therefore claimant established total disability due to pneumoconiosis by a preponderance of evidence at 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer asserts that the administrative law judge erred in crediting Dr. Baker's opinion at 20 C.F.R. §718.204(c). Claimant has not filed a response brief. The Director declined to file a brief in this appeal.

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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

---

<sup>4</sup> The Board affirmed, as unchallenged on appeal, the administrative law judge's finding that claimant established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). *D.M.C. [Cole] v. Wampler Brothers Coal Co.*, BRB No. 07-0969 BLA, slip op. at 3 n.2 (Aug. 28, 2008) (unpub.).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Relevant to 20 C.F.R. §718.204(c),<sup>5</sup> the administrative law judge considered the opinions of Drs. Jarboe<sup>6</sup> and Baker.<sup>7</sup> Initially, the administrative law judge observed that the Board did not fault her prior determination to discount Dr. Jarboe's opinion as equivocal. The administrative law judge found that Dr. Baker adequately considered claimant's smoking history when he attributed claimant's "COPD with moderate obstructive defect" and "chronic bronchitis" to both coal dust exposure and cigarette smoking. Further, the administrative law judge found Dr. Baker's statement, that each

---

<sup>5</sup> Section 718.204(c)(1) provides that:

A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

(i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or

(ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1).

<sup>6</sup> Dr. Jarboe stated that it was "possible" that pneumoconiosis or coal dust exposure "contributed to some extent to the impairment present." Director's Exhibit 12 at 14.

<sup>7</sup> Dr. Baker opined that coal workers' pneumoconiosis; chronic obstructive pulmonary disease (COPD) and chronic bronchitis, both due to coal dust exposure and smoking; and ischemic heart disease each contribute "fully" to claimant's moderate respiratory impairment. Director's Exhibit 10.

condition he diagnosed contributes “fully” to claimant’s respiratory impairment, was an opinion that “all of the diagnoses” contribute fully to claimant’s total disability. Decision and Order on Remand at 4-5. The administrative law judge rejected employer’s assertion that Dr. Baker’s opinion was ambiguous, finding “no ambiguity or conjecture in Dr. Baker’s opinion.” *Id.* at 5. Further, the administrative law judge rejected employer’s argument that Dr. Baker’s opinion was unexplained and thus unreasoned. *Id.* The administrative law judge determined that claimant established by a preponderance of evidence that his total disability is due to pneumoconiosis. Decision and Order on Remand at 6.

After consideration of the administrative law judge’s Decision and Order on Remand, the issues on appeal, and the evidence of record, we conclude that the administrative law judge’s Decision and Order on Remand is supported by substantial evidence, contains no reversible error, and must, therefore, be affirmed. We reject employer’s assertion that the administrative law judge erred in relying on Dr. Baker’s opinion to establish disability causation because Dr. Baker’s opinion is equivocal and fails to “rule in” coal dust exposure as a contributing cause of claimant’s impairment. Employer’s Brief at 7, 9. The administrative law judge acted within her discretion as the trier-of-fact in finding that the “natural reading” of Dr. Baker’s opinion was that “all of the diagnoses he previously described contributed ‘fully’ to [c]laimant’s disability” and that each diagnosis, including COPD due to coal dust exposure, “could constitute a complete cause of” claimant’s disability. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000); Decision and Order on Remand at 4, 5; Director’s Exhibit 10 at 11. The administrative law judge correctly determined that it was “not necessary for Dr. Baker to have apportioned the causes as long as pneumoconiosis was a substantial cause of disability.” Decision and Order on Remand at 5; *see Crockett Collieries, Inc. v. Director, OWCP [Barrett]*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Cornett*, 227 F.3d at 576, 22 BLR at 2-121.

We additionally reject employer’s contention that, in crediting Dr. Baker’s opinion, the administrative law judge “inferred documentation and reasoning that [Dr. Baker] did not himself provide.” Employer’s Brief at 9. Contrary to employer’s assertion, the administrative law judge specifically noted that the explanation that Dr. Baker provided for his causation opinion was limited to his statement that each of the conditions that he diagnosed contributes “fully” to claimant’s impairment. Decision and Order on Remand at 4; Director’s Exhibit 10 at 11. As the administrative law judge further stated, a physician is not required to provide a detailed explanation in order for his opinion to be found reasoned. *See Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 642, 24 BLR 2-199, 2-221 (6th Cir. 2009); Decision and Order on Remand at 5. Because the record reflects that Dr. Baker based his opinion on a physical examination

and medical testing,<sup>8</sup> contrary to employer's assertion, the administrative law judge acted within her discretion in finding Dr. Baker's opinion to be adequately reasoned and documented.<sup>9</sup> See *Greene*, 575 F.3d at 642, 24 BLR at 2-221; *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987). Therefore, we affirm the administrative law judge's finding that claimant established total disability due to legal pneumoconiosis by a preponderance of evidence at 20 C.F.R. §718.204(c). See *Grundy Mining Co. v. Flynn*, 353 F.3d 467, 483-84, 23 BLR 2-44, 2-71 (6th Cir. 2003); *Smith v. Martin County Coal Corp.*, 23 BLR 1-69, 1-75 (2004); see also *Barrett*, 478 F.3d at 356, 23 BLR at 2-483. Because claimant has established each element of entitlement, we affirm the award of benefits.

---

<sup>8</sup> Dr. Baker stated that he diagnosed coal workers' pneumoconiosis based on claimant's abnormal x-ray and coal dust exposure; COPD with moderate obstructive defect based on claimant's pulmonary function studies; chronic bronchitis based on claimant's history of cough, sputum production and wheezing; and ischemic heart disease based on "S/P angioplasty and stents." Director's Exhibit 10 at 11.

<sup>9</sup> We decline to address employer's renewed challenges to the administrative law judge's finding of legal pneumoconiosis. Previously, the Board rejected employer's allegations of error and affirmed the administrative law judge's finding of legal pneumoconiosis. *Cole*, BRB No. 07-0969 BLA, slip op. at 5. Because employer has not set forth any compelling argument for altering the Board's prior disposition, we decline to revisit the legal pneumoconiosis issue. See *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

---

ROY P. SMITH  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge