

BRB No. 92-1301 BLA

WILLIE C. COUCH                    )  
  )  
    Claimant-Petitioner            )  
  )  
    v.                                    )  
  )  
MANALAPAN MINING COMPANY,    )  
INCORPORATED                    )  
  )  
    and                                )  
  )  
  )    DATE ISSUED:  
THE CONNECTICUT INDEMNITY    )  
COMPANY                            )  
    Employer/Carrier-            )  
        Respondent                )  
  )  
DIRECTOR, OFFICE OF WORKERS'    )  
COMPENSATION PROGRAMS, UNITED   )  
STATES DEPARTMENT OF LABOR    )  
  )  
    Party-in-Interest            )    DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Remand of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

John C. Carter (Carter & Busroe Law Offices), Harlan, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

Before: BROWN and DOLDER, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.\*

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits on Remand (89-BLA-0085) of Administrative Law Judge Richard E. Huddleston 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). This claim is on appeal

before

\*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)(1988).

the Board for the second time. In his first Decision and Order, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, accordingly, benefits were denied. On appeal, the Board affirmed the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2) and (3), and remanded the case for the administrative law judge to reconsider the evidence pursuant to 20 C.F.R. §718.202(a)(1) and (4). The Board further instructed the administrative law judge to determine the length of claimant's coal mine employment. *Couch v. Manalapan Mining Co., Inc.*, BRB No. 91-0395 BLA (Oct. 11, 1991)(unpub.). On remand, the administrative law judge found that claimant established thirteen years of coal mine employment, the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), and that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge then found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were again denied. On appeal, claimant generally contends that the administrative law judge erred in weighing the medical opinion evidence pursuant to 20 C.F.R. §718.204(c)(4). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond to this appeal.<sup>1</sup>

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are in accordance with law. 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).

Pursuant to 20 C.F.R. §718.204(c)(4), the administrative law judge considered the five medical opinions of record. The administrative law judge permissibly found that Drs. Penman and Baker, in reports from 1986, failed to make a determination as to the extent of any disability that claimant may have. See Decision and Order on Remand at 8; Director's Exhibit 22. The administrative law judge further permissibly held that Dr. Anderson, in a 1986 report, noted normal pulmonary function and blood gas studies and when deposed, stated that claimant retained the pulmonary capacity to perform heavy labor such as that in and around coal mining. See Decision and Order on Remand at 8; Director's Exhibit 22 (Dr. Anderson's Deposition at 16). The administrative law judge then considered the opinions of Drs. Wright and Dahhan. Dr. Wright, in a 1987 deposition, found no

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<sup>1</sup>The administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1), 718.203(b), and 718.204(c)(1)-(3) are affirmed as they are not challenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

evidence of pneumoconiosis and stated that claimant retains the respiratory capacity to perform arduous manual labor on a sustained basis. See Director's Exhibit 22. Dr. Dahhan, in 1987 and 1988 reports, found no evidence of total or pulmonary disability. See Director's Exhibits 8, 22. The administrative law judge permissibly accorded the most weight to the opinions of Drs. Wright and Dahhan as they are the most recent. See Decision and Order on Remand at 8; *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990).<sup>2</sup> As a result, the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(4) is affirmed as it is supported by substantial evidence.

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

SO ORDERED.

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

LEONARD N. LAWRENCE  
Administrative Law Judge

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<sup>2</sup>Claimant's contention that the administrative law judge erred on remand by considering the opinion of Dr. Dahhan, which he previously found to be equivocal, is without merit as the administrative law judge's initial finding regarding this opinion under 20 C.F.R. §718.202(a)(4) was vacated by the Board, and the case remanded to the administrative law judge for further consideration of this issue. See *generally Dale v. Wilder Coal Co.*, 8 BLR 1-119 (1985). Moreover, on remand, the administrative law judge considered this opinion pursuant to 20 C.F.R. §718.204(c)(4) and permissibly found it to be probative on the issue of total disability.