

BRB No. 96-0756 BLA

TRUMAN HURT)	
)	
Claimant-Respondent)	
)	
v.)	
)	DATE ISSUED:
ADENA FUELS, INCORPORATED)	
)	
and)	
)	
KENTUCKY COAL PRODUCERS)	
SELF-INSURANCE FUND)	
)	
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 of J. Michael O'Neill, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Denise M. Davidson (Barret, Haynes, May, Carter & Roark), Hazard, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (94-BLA-0572) of Administrative

Law Judge J. Michael O'Neill awarding benefits on a claim¹ 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). Initially, the administrative law judge found

¹ Claimant is Truman Hurt, the miner, whose application for benefits filed on November 12, 1992 was initially denied on April 21, 1993, but was subsequently awarded after the consideration of additional evidence on November 8, 1993. Director's Exhibits 1, 16, 33.

that employer failed to establish good cause for the late submission of post-hearing evidence and therefore excluded certain proffered exhibits from the record. The administrative law judge then credited claimant with eighteen years of coal mine employment and found that he had smoked one pack of cigarettes per day for ten years before quitting approximately twenty years ago. The administrative law judge found the existence of pneumoconiosis arising out of coal mine employment established pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b), concluded that claimant was totally disabled due to pneumoconiosis pursuant to Section 718.204, and, accordingly, awarded benefits effective November 1, 1992.

On appeal, employer challenges the administrative law judge's weighing of the evidence pursuant to Section 718.202(a)(4) and contends that he failed to determine whether pneumoconiosis is a contributing cause of claimant's total disability pursuant to Section 718.204(b). Claimant has not responded, and the Director, Office of Workers' Compensation Programs (the Director), 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 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).

Pursuant to Section 718.202(a)(4), employer contends that the administrative law judge failed to provide a rationale for his weighing of the evidence. Employer's Brief at 4-5. Section 718.202(a)(4) provides for a determination of the existence of pneumoconiosis based on a reasoned medical opinion. 20 C.F.R. §718.202(a)(4). Although an administrative law judge need not accept the opinion of any particular medical witness or expert, the administrative law judge must provide a sufficient rationale for his weighing of the evidence as required by the Administrative

² We affirm as unchallenged on appeal the administrative law judge's findings regarding good cause, smoking history, length of coal mine employment, and pursuant to 20 C.F.R. §§718.202(a)(1)-(3), 718.203(b), and 718.204(c). See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2); see *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); see also *Director, OWCP v. Congleton*, 743 F.2d 428, 7 BLR 2-12 (6th Cir. 1984).

Drs. Anderson, Baker, Lane, and Sandlin diagnosed the existence of pneumoconiosis, Director's Exhibits 26, 31; Claimant's Exhibit 10, while Drs. Dahhan and Wicker opined that claimant's respiratory impairment was unrelated to coal dust exposure but was instead due to smoking. Director's Exhibit 10, 11, 28; Claimant's Exhibit 11; see 20 C.F.R. §718.201. The administrative law judge stated that "I do not credit the opinions of Drs. Dahhan and Wicker, attributing the claimant's pulmonary impairment solely to his 10 pack-year smoking history and none to his 18 or more years of coal mine dust exposure." Decision and Order at 9 (emphasis in original). In so doing, the administrative law judge indicated that Dr. Wicker had "conceded that it is possible that the claimant's impairment is due to a combination of cigarette smoke and coal dust," and stated that Dr. Baker's assessment was "in accord with the view that dust inhalation and smoking combined to produce a pulmonary impairment." *Id.* Thus, the administrative law judge concluded that "claimant does have pneumoconiosis caused by dust inhalation in his coal mine employment." *Id.*

Regarding the administrative law judge's consideration of Dr. Baker's opinion, the administrative law judge has not explained whose view it is that dust inhalation and smoking combined to produce a pulmonary impairment, or why it is being credited. Decision and Order at 9; see *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Wojtowicz, supra*; *Congleton, supra*. Review of the record indicates that Dr. Wicker did concede under cross-examination that he could not rule out the possibility that coal dust aggravated claimant's respiratory impairment. Claimant's Exhibit 11 at 26. However, Dr. Dahhan made no such concession, and both physicians explained why they believed that the physical findings, objective data, and the nature of claimant's impairment indicated that he did not have pneumoconiosis. Director's Exhibits 10, 11, 28; Claimant's Exhibit 11.

Further, although the administrative law judge in his summation of the medical evidence listed several factors in each report which could have been used to provide a basis for crediting each opinion,³ he failed to indicate which, if any, of these factors he relied upon to credit the opinions of Drs. Anderson, Baker, Lane, and Sandlin

³ The administrative law judge noted the physicians' qualifications, the status of Drs. Sandlin and Wicker as treating physicians, and each physician's explanation for his conclusions. Decision and Order at 6-8.

over those of Drs. Dahhan and Wicker. Nor did the administrative law judge indicate whether his finding regarding the miner's smoking history was a factor in his weighing of the evidence. Inasmuch as the administrative law judge has not provided a sufficient rationale for his finding pursuant to Section 718.202(a)(4), we vacate his finding and remand the case for him to reconsider the medical opinion evidence and to fully explain his rationale consistent with the APA. See *Wojtowicz, supra*; *Congleton, supra*.

Employer next contends that the administrative law judge should have discredited Dr. Baker's opinion because it was based in part on a positive x-ray reading when the administrative law judge found the x-ray evidence to be negative for pneumoconiosis. Employer's Brief at 6-7. Contrary to employer's contention, an administrative law judge may not discredit a medical opinion merely because it relies on a positive x-ray interpretation that conflicts with the weight of the x-ray evidence. See *Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Taylor v. Director, OWCP*, 9 BLR 1-22 (1986). Therefore, we reject employer's argument.⁴

Pursuant to Section 718.204(b), employer argues that the administrative law judge failed to apply the proper causation standard. Employer's Brief at 8. The United States Court of Appeals for the Sixth Circuit, within whose appellate jurisdiction this case arises, has held that in order to establish causation pursuant to Section 718.204(b) claimant must establish that his total disability is due at least in part to pneumoconiosis. *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52, 2-63 (6th Cir. 1989).

Drs. Baker and Sandlin opined that claimant's pneumoconiosis was at least a contributing cause of his total disability, while Drs. Wicker and Dahhan indicated that claimant was totally disabled due to the effects of smoking. Director's Exhibits 10, 11, 26, 28, 31; Claimant's Exhibit 10. Although Drs. Anderson and Lane both diagnosed the existence of pneumoconiosis, Dr. Anderson indicated that emphysema was the cause of claimant's total disability, while Dr. Lane stated that chronic obstructive pulmonary disease caused claimant's disabling impairment. Director's Exhibit 26. Neither physician linked the emphysema or chronic obstructive pulmonary disease to the claimant's coal dust exposure. *Id.*; see 20 C.F.R.

⁴ Employer alleges a host of additional shortcomings in Dr. Baker's opinion, all of which are credibility issues within the sole discretion of the administrative law judge. Employer's Brief at 6-7. Because the Board is not empowered to weigh the evidence, we reject employer's contentions. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988).

§§718.201, 718.204(b).

The administrative law judge's brief finding at Section 718.204(b) was that "as previously discussed, the claimant's chronic pulmonary impairment must be considered to be pneumoconiosis. Since that impairment is totally disabling, the claimant has established that his total disability is due to pneumoconiosis." Decision and Order at 9. Because the administrative law judge relied on his defective analysis from Section 718.202(a)(4) and did not weigh the medical opinions under the applicable standard, *see Adams, supra*, we vacate his finding pursuant to Section 718.204(b) and remand the case for him to reconsider the relevant evidence and to provide an adequate rationale for his finding. See *Wojtowicz, supra*; *Congleton, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

_____ JAMES F.
BROWN
Administrative Appeals Judge

_____ NANCY S.
DOLDER
Administrative Appeals Judge