BRB No. 97-0974 BLA

JOHN H. PRITT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
IMPERIAL COLLIERY COMPANY	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Edith Barnett, Administrative Law Judge, United States Department of Labor.

Ann B. Rembrandt (Jackson & Kelly), Charleston, Virginia, for employer.

Barry Joyner (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (93-BLA-0379) of Administrative Law Judge Edith Barnett ordering reimbursement of medical expenses to the Black Lung Disability Trust Fund (Trust Fund) 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 case is on appeal to the Board for the second time. In a Decision and Order dated June 2, 1986, Administrative Law Judge Rudolf L. Jansen awarded medical benefits to claimant. The district director requested employer to reimburse the Trust Fund for medical expenses amounting to $12,111.24 paid by the Department of Labor for treatment rendered to claimant between 1986 and 1991. Employer alleged that the medical treatment expenses were not necessary to treat pneumoconiosis and refused to comply with the district director's request. In a Decision and Order dated August 19, 1993, Administrative Law Judge George A. Fath found the disputed expenses, which the Director, Office of Workers' Compensation Programs (the Director), revised to $11,680.79, were necessary for the treatment of claimant's pulmonary condition which was caused, or at least aggravated by, his pneumoconiosis. The administrative law judge ordered employer to reimburse the Trust Fund for the expenses. Employer appealed and in *Pritt v. Imperial Colliery Co.*, BRB No. 93-2506 BLA (Aug. 17, 1994)(unpub.), the Board discussed the holding of the United States Court of Appeals for the Fourth Circuit in *Doris Coal Co. v. Director, OWCP* [Stiltner], 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991), rejected employer's interpretation and held that claimant met his burden of proving that his pulmonary disorders fell within the definition of legal pneumoconiosis. The Board affirmed the administrative law judge's determination that claimant was entitled to the presumption that his treatments were for a pulmonary disorder caused or at least aggravated by, his pneumoconiosis, noting that the administrative law judge permissibly discredited the opinions of Drs. Zaldivar and Fino with regard to the issue of whether claimant's treatment for his pulmonary disorder was sufficiently related to his pneumoconiosis. The Board then affirmed the administrative law judge's Decision and Order for reimbursement of medical expenses to the Trust Fund. Employer filed a Motion for Reconsideration which the Board granted. In its Decision and Order on Reconsideration *en banc*, the Board affirmed the administrative law judge's determination that the expenses specifically representing treatment of the miner's respiratory and/or pulmonary impairment were related to the miner's pneumoconiosis and thus, were reimbursable, noting that in light of this holding, it was not necessary to address employer's specific contentions regarding the presumption created by the court's holding in *Stiltner*, *supra*. The Board vacated the administrative law judge's consideration and subsequent inclusion of those medical expenses representing treatment for conditions unrelated to claimant's pneumoconiosis and remanded the case to the administrative law judge to specifically consider expenses representing treatment of claimant's heart and stomach conditions and to separate these expenses out as noncompensable. *Pritt v. Imperial Colliery Co.*, BRB No. 93-2506 BLA (May 9, 1996)(recon. *en banc*)(unpub.).

On remand, Administrative Law Judge Barnett reviewed the medical bills and expenses of record and excluded $430.35 of expenses related solely to heart and stomach medications and ordered employer to reimburse the Trust Fund in the amount of $11,680.79 for medical services provided to the claimant in the treatment of his pneumoconiosis and ancillary pulmonary conditions. On appeal herein, employer does not raise any allegations of error with respect to Judge Barnett's Decision and Order on Remand. Employer again contends that Judge Fath erred in his evaluation of the medical opinions of Drs. Fino and Zaldivar and also again argues that the Board's implementation of the holding in *Stiltner*, *supra*, creates an irrebuttable presumption that all medical treatment expenses for any pulmonary condition are compensable under the Act. The Director responds, urging rejection of employer's contentions and affirmance of the administrative law judge's Decision and Order on Remand. Claimant has not responded in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon the Board and may not be disturbed. 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).

Inasmuch as employer does not challenge any aspect of Judge Barnett's Decision and Order on Remand, her decision is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Moreover, we have previously considered and rejected employer's identical argument with respect to Judge Fath's consideration and weighing of the medical opinions of Drs. Zaldivar and Fino. We decline to address these issues again. *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984). Finally, the Board has held that in order to rebut the presumption in *Stiltner*, employer may show, by a reasoned medical opinion, either that: 1) the expenses in question were not reasonable for the treatment of any of claimant's pulmonary diseases (i.e., a reasoned medical opinion stating that a certain type of treatment is excessive or simply not necessary for the treatment of claimant's pulmonary condition); or 2) the treatment is for a condition completely unrelated to claimant's pulmonary condition (e.g., treatment for a heart condition, broken bone or bad back). *Seals v. Glen Coal Co.*, 19 BLR 1-80, fn. 6 (1995)(en banc)(Brown, J., concurring), *appeal docketed*, No. 96-4121 (6th Cir. Aug. 20, 1996). Consequently, employer's contentions regarding the creation of an irrebuttable presumption are without merit.

Accordingly, the Decision and Order on Remand of the administrative law judge ordering reimbursement of medical expenses to the Trust Fund is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge