BRB No. 02-0796 BLA

EDDIE L. HATFIELD	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HOBET MINING, INC.	)	
	)	DATE ISSUED: 08/29/2003
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 of Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

Eddie L. Hatfield, Lenore, West Virginia, *pro se*.

Ashley M. Harman and Douglas A. Smoot (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2001-BLA-333) of Administrative Law Judge Robert J. Lesnick awarding benefits 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).[1] This case has been before the Board previously. In the original Decision and

[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726

Order, Administrative Law Judge Edward Terhune Miller credited claimant with thirteen and one-half years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. '718.202(a) (2000) and insufficient to establish total disability pursuant to 20 C.F.R. '718.204(c) (2000).[2] Accordingly, the administrative law judge denied benefits. In response to claimant=s appeal, the Board affirmed the administrative law judge=s length of coal mine employment finding and his finding at Section 718.202(a) (2000). The Board thus affirmed the denial of benefits and declined to review the administrative law judge=s finding under Section 718.204(c) (2000). *Hatfield v. Hobet Mining, Inc.*, BRB No. 98-1024 BLA (May 27, 1999)(unpub.).

Claimant subsequently filed a timely motion for reconsideration, but the Board declined to modify its affirmance of the administrative law judge=s finding that the existence of pneumoconiosis was not established under Section 718.202(a) (2000). However, the Board vacated the denial of benefits because the Director, Office of Workers= Compensation Programs (the Director), did not discharge his statutory duty of providing claimant with a pulmonary examination sufficient to constitute an opportunity to substantiate the claim. Consequently, the Board remanded the case to the district director for a complete pulmonary examination of claimant. *Hatfield v. Hobet Mining, Inc.*, BRB No. 98-1024 BLA (Feb. 17, 1999)(unpub.).

On remand, after obtaining additional medical evidence and reports, the district director again denied the claim, and the case was subsequently referred to the Office of Administrative Law Judges. A hearing was held and new evidence was submitted. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis at Section 718.202(a) and also found the evidence sufficient to establish total disability due to pneumoconiosis at Section 718.204(b), (c). Accordingly, the administrative law judge awarded benefits.

(2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2]The provision pertaining to total disability, previously set out at 20 C.F.R. '718.204(c), is now found at 20 C.F.R. '718.204(b), while the provision pertaining to disability causation, previously set out at 20 C.F.R. '718.204(b), is now found at 20 C.F.R. '718.204(c).

On appeal, employer challenges the administrative law judge=s finding that the evidence was sufficient to establish the existence of pneumoconiosis at Section 718.202(a). Employer also challenges the administrative law judge=s finding that the evidence is sufficient to establish total disability due to pneumoconiosis at Section 718.204(b), (c). Claimant responds, urging affirmance of the administrative law judge=s award of benefits. The Director has declined to participate in this appeal.[3]

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 this 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).

Initially, employer contends that the administrative law judge erred in finding the evidence sufficient to establish the existence of pneumoconiosis at Section 718.202(a). Employer=s contention is based upon its assertions that the administrative law judge improperly credited the opinions of Drs. Al-Asbahi and Kamthan as treating physicians and failed to consider all of the x-ray evidence as well as the qualifications of the x-ray readers at Section718.202(a)(1). Employer also contends that the administrative law judge erred in failing to consider Dr. Walker=s report, and improperly weighed the medical opinions he considered at Section 718.202(a)(4). Employer=s contentions have merit.

With regard to Section 718.202(a)(1), employer asserts that the administrative law judge erred by relying only on the status of Drs. Al-Asbahi and Kamthan as Atreating physicians@ rather than relying on the radiological qualifications of these physicians and the other physicians who provided x-ray readings. The administrative law judge initially listed several x-rays, including the date they were taken, read and reread, and the names of the physicians and their qualifications, interpretations and comments. Decision and Order at 4-5, 7-12. The administrative law judge subsequently found that there were twenty-seven interpretations of ten x-rays of record, but that there was a wide discrepancy not only as to the interpretations but also as to the quality of the films. Decision and Order at 13. The administrative law judge provided a detailed discussion of several of the x-ray readings. Decision and Order at 13-14. In considering the x-ray evidence as a whole, the administrative law judge stated:

Out of the ten x-ray films submitted into evidence, six doctors have found

[3]Employer filed a brief in reply to claimant=s response brief, reiterating its prior contentions.

> signs of coal workers= pneumoconiosis. However, there are just as many doctors claiming there are no signs of coal workers= pneumoconiosis. While being mindful that greater weight may be accorded to dually-qualified physicians, I found it necessary to accord equal weight to the treating physicians= interpretations. This reasoning is based on the fact that these physicians examined, treated, and cared for Claimant. Also, at least two doctors who found no signs of coal workers= pneumoconiosis on the x-ray films, wrote in their reports that Claimant either suffered from a pulmonary obstructive disease, COPD, or coal workers= pneumoconiosis as a result of his years of work in the coal mines. Further, several of the physicians who found no signs of pneumoconiosis on the x-ray films made notes of the poor quality of the film (DX 34), further stating that the image was poor, or the film was too light, and underdeveloped. In view of the foregoing, I accord greater weight to the treating physicians, and I find that the Claimant has established that he suffers from pneumoconiosis. (Footnotes omitted).

Decision and Order at 14-15.

Employer correctly asserts that the administrative law judge has failed to provide an adequate rationale for his weighing of the x-ray evidence of record. It appears that the administrative law judge merely resolved the conflicting x-ray readings by according greater weight to the x-ray readings by Atreating physicians,@ Drs. Kamthan and Al-Asbahi, who, the administrative law judge states, had diagnosed pneumoconiosis based on seeing lung changes which presumably were consistent with pneumoconiosis. The regulations at Section 718.202(a)(1) state that the existence of pneumoconiosis may be established by a chest x-ray conducted and classified in accordance with 20 C.F.R. ' 718.102. 20 C.F.R. ' 718.202(a)(1). The record indicates that Dr. Kamthan, who treated claimant during his four-day hospitalization in 1995 for non pulmonary problems, did not provide any x-ray readings, and that Dr. Al-Ashabi did not provide any readings properly classified pursuant to Section 718.102.[4] The administrative law judge therefore erred in according weight to the x-ray readings by Drs. Kamthan and Al-Asbahi at Section 718.202(a)(1) on the ground that they

[4] Although the administrative law judge found that Dr. Kamthan interpreted the January 27, 1995 x-ray, the record indicates the x-ray was interpreted by Dr. R. Smith, who did not diagnose pneumoconiosis and did not provide an ILO classification. Decision and Order at 4, 8, 14; Director=s Exhibit 9. Dr. Al-Ashabi, who read two x-rays taken on March 22, 1995 and March 24, 1995 during claimant=s hospitalization, did not provide an ILO classification. Director=s Exhibit 9. The administrative law judge stated that these x-rays were taken on March 23, 1995 and March 25, 1995, but a review of the exhibits reveals a notation that they were actually taken on March 22, 1995 and March 24, 1995.

treated claimant. The regulations specifically state that in evaluating conflicting x-ray reports, Aconsideration shall be given to the *radiological* qualifications of the physicians interpreting such X-rays.@ (emphasis added). Thus, the administrative law judge did not provide a valid rationale for his weighing the conflicting x-ray evidence. *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993). Based on the foregoing, we vacate the administrative law judge=s determination that the x-ray evidence establishes the existence of pneumoconiosis and remand the case for reconsideration of all of the relevant x-ray evidence of record under 20 C.F.R. ' 718.202(a)(1). *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992).

In the interest of judicial efficiency, we shall discuss employer=s other specific charges of error. Employer contends that the administrative law judge was Ainternally inconsistent@ in his discussion of the x-ray evidence. Employer argues that the administrative law judge initially states he is according greater weight to Drs. Kamthan and Al-Asbahi and therefore finds claimant established the existence of pneumoconiosis by x-ray evidence, but several paragraphs later he states that the Ax-ray evidence taken by itself cannot establish that claimant is suffering from pneumoconiosis.@ Employer=s Brief at 18; *see* Decision and Order at 15-16. We agree with employer that the administrative law judge=s findings are not clear. Employer also argues that the administrative law judge found Dr. Meyer=s report of the July 5, 2000 x-ray to be the most credible, but nevertheless concluded that the opinions of Drs. Kamthan and Al-Asbahi were entitled to greater weight. Decision and Order at 5, 14; Employer=s Exhibit 3. The administrative law judge acknowledged that Dr. Meyer did Anot find that claimant suffers from coal workers= pneumoconiosis,@ but stated that Dr. Meyer Adoes not conclusively state that he does not.@ Decision and Order at 14. Employer correctly asserts, however, that while the administrative law judge acknowledged on page 14 of the Decision and Order the negative interpretations of the July 5, 2000 film by Drs. Wiot and Spitz, dually qualified Board-certified radiologists and B readers, the administrative law judge did not consider the reading by Dr. Castle, a B reader, did not list these three radiologists in his chart of the x-ray evidence, and did not provide an adequate explanation for according these x-ray interpretations little, if any, weight. Employer=s Exhibits 1, 6, 7.

Employer also correctly asserts that the administrative law judge failed to consider the negative interpretation of the May 10, 1996, x-ray by Dr. Gaziano, a B reader, Director=s Exhibit 13, the negative interpretations of the June 10, 1997, x-ray by Drs. Wheeler and Scott, dually qualified Board-certified radiologists and B readers, Employer=s Exhibit 10, and the negative interpretation of the May 26, 2000, x-ray by Dr. Navani, a dually qualified Board-certified radiologist and B reader, Director=s Exhibit 60. On remand, the administrative law judge is instructed to consider all the x-ray evidence of record and to provide the reasons or basis for his findings and conclusions in a manner sufficient to satisfy

the Administrative Procedure Act (APA).[5] 20 C.F.R. ' 718.202(a).

Employer also asserts that the administrative law judge erred in finding the medical opinion evidence sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4). Specifically, employer argues that the administrative law judge failed to adequately explain his rationale for crediting the opinions of Drs. Ranavaya, Younes, Rao, Khan and Kamthan, as well as the finding of the West Virginia Occupational Pneumoconiosis Board, over the contrary opinions of Drs. Zaldivar, Dahhan, Fino and Castle. The administrative law judge indicated that Drs. Ranavaya, Younes, Rao, Khan and Kamthan provided well-reasoned and well-documented opinions and that they found claimant suffers from occupational pneumoconiosis. Decision and Order at 15-16. The administrative law judge gave Alittle or no weight@ to Dr. Zaldivar=s medical reports because of the inconsistencies in his reports coupled with his admission that the pulmonary function studies he performed were invalid. Decision and Order at 16. In addition, the administrative law judge gave little weight to Athose doctors who based their medical opinions on the erroneous conclusions reached by Dr. Zaldivar.@ *Id.*

Before finding the medical reports of record sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4), the administrative law judge must determine if the reports are reasoned and documented. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A reasoned opinion is one in which the administrative law judge finds the underlying documentation adequate to support the physician=s conclusions. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Whether a medical report is sufficiently documented and reasoned is for the administrative law judge as the fact-finder to decide. *See Clark*, 12 BLR 1-149; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985). To make that determination, the administrative law judge must examine the validity of the reasoning of a medical opinion in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based.

[5] The Administrative Procedure Act, 5 U.S.C. ' 557(c)(3)(A), as incorporated into the Act by 5 U.S.C. ' 554(c)(2), 33 U.S.C. ' 919(d) and 30 U.S.C. ' 932(a), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Hall v. Director, OWCP*, 12 BLR 1-80 (1988); *Shaneyfelt v. Jones & Laughlin Steel Corp.*, 4 BLR 1-144 (1981).

In this case, the administrative law judge stated that Drs. Ranavaya, Younes, Rao and Kamthan Aexamined Claimant independently, along with ordering x-rays and in some cases pulmonary functions tests. They all documented Claimant=s work history, medical history and the reasons upon which their opinions are based.@ Decision and Order at 16. However, the administrative law judge did not explain the basis for his finding that the opinions of Drs. Ranavaya, Younes, Rao and Kamthan were well-reasoned. *See* Decision and Order at 15-16. Moreover, with respect to the opinions of Drs. Rao, Khan and Kamthan, employer correctly asserts that it was error for the administrative law judge to rely on these opinions to find the existence of pneumoconiosis established. Director=s Exhibit 9. The record reflects that Drs. Rao, Khan and Kamthan do not attribute any condition or impairment to the miner=s coal mine employment. These medical opinions thus do not appear to support a finding of legal pneumoconiosis. *See* 20 C.F.R. ' 718.201(a)(2); *Clinchfield Coal Co. v. Fuller*, 180 F.3d 622, 21 BLR 2-654 (4th Cir. 1999). In addition, employer correctly asserts that in finding the existence of pneumoconiosis established, the administrative law judge did not consider Dr. Walker=s medical report of an examination dated May 26, 2000. Director=s Exhibit 60. As we discussed earlier, the administrative law judge=s findings at Section 718.202(a)(4) must be vacated and the case must be remanded for reevaluation thereunder. *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985); *Branham v. Director, OWCP*, 2 BLR 1-111, 1-113 (1979). On remand, the administrative law judge is instructed to reconsider this evidence and to provide the reasons or bases for his findings and conclusions in a manner sufficient to satisfy the APA. *Fuller*, 6 BLR 1-1291.

Furthermore, employer asserts that the administrative law judge improperly rejected the opinions of Drs. Dahhan, Fino and Castle, board-certified pulmonary specialists, because they did not examine claimant. The administrative law judge stated that:

> In light of the inconsistencies in Dr. Zaldivar=s medical reports, coupled with Dr. Zaldivar=s repeated admissions that parts of the results obtained from both of the pulmonary function tests that he performed on Claimant are invalid, I give little or no weight to his medical reports based on those test results. Furthermore, those doctors that based their medical opinions on the erroneous conclusions reached by Dr. Zaldivar will also carry little weight.

Decision and Order at 16. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that when evaluating the medical evidence, the administrative law judge must consider the qualifications of the respective physicians, the explanation of their medical opinions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses, because absolute deference should not be accorded to the opinions of treating and examining physicians. *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). It is the province

of the administrative law judge to evaluate the medical opinion evidence and, as trier of fact, the administrative law judge is not bound to accept the medical opinion or theory of any medical expert. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Doss v. Director, OWCP*, 53 F.3d 654, 19 BLR 2-181 (4th Cir. 1995). Although the administrative law judge does not specifically state that he is referring to Drs. Dahhan, Fino and Castle, these are the only physicians who based their opinions, in part, on Dr. Zaldivar=s report. However, the only discernible reasons that the administrative law judge has proffered for discrediting the opinions of Drs. Dahhan, Fino and Castle are their status as non-examining physicians and their apparent reliance on Dr. Zaldivar=s conclusions. The administrative law judge, however, has not specifically stated how Dr. Zaldivar=s reports were inconsistent nor how he determined the extent to which Drs. Dahhan, Fino and Castle based their medical opinions on the reports of Dr. Zaldivar. On remand, the administrative law judge is instructed to reconsider this evidence and to provide the reasons or bases for his findings and conclusions in a manner sufficient to satisfy the APA. *Fuller*, 6 BLR 1-1291.

Additionally, employer correctly asserts that the administrative law judge credited the conclusion of the West Virginia Occupational Pneumoconiosis Board without considering the reasoning and documentation contained therein. Thus, on remand, the administrative law judge is instructed to consider these medical opinions in his weighing of the conflicting medical opinions in accordance with *Akers*, 131 F.3d 438, 21 BLR 2-269. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998).

Moreover, if the administrative law judge finds the evidence sufficient to establish the existence of pneumoconiosis at 20 C.F.R. ' 718.202(a)(1) or (a)(4), the administrative law judge must weigh all types of relevant evidence together at 20 C.F.R. ' 718.202(a)(1)-(4) to determine whether claimant has established the existence of pneumoconiosis in accordance with *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). *See also Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). Additionally, since the administrative law judge=s aforementioned errors directly impact his findings regarding total disability due to pneumoconiosis and his statement that A[e]leven physicians= opinions addressed the issue of whether or not Claimant is totally disabled due to pneumoconiosis,@ we vacate the administrative law judge=s finding that the evidence was sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. ' 718.204(c) and instruct the administrative law judge, on remand, to reconsider the evidence thereunder, if necessary. Moreover, in rendering findings on remand, the administrative law judge is further instructed to properly identify the reports and physicians he is referring to in his discussion of the medical evidence so as to satisfy the requirements of the APA.

Accordingly, the administrative law judge=s Decision and Order awarding benefits is vacated and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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PETER A. GABAUER, Jr.
Administrative Appeals Judge