BRB No. 02-0232 BLA

WILLIAM D. MEAKIN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
JOY TECHNOLOGIES, INCORPORATED	)	
	)	DATE ISSUED:
and	)	
	)	
NATIONAL UNION FIRE INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	DECISION AND ORDER
Party-in-Interest		

Appeal of the Decision and Order Awarding Benefits on Remand from the Benefits Review Board of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

William S. Mattingly (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits on Remand from the Benefits Review Board (96-BLA-1566) of Administrative Law Judge Ainsworth H. Brown with respect to 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 is the third time that this case has been before the Board.[2]

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[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 (2002). The regulation regarding the cause of a miner's totally disabling respiratory or pulmonary impairment, formerly set out at 20 C.F.R. §718.204(b), is now set forth in 20 C.F.R. §718.204(c).

[2]In his initial Decision and Order, the administrative law judge determined that claimant, an engineer who conducted ventilation surveys and sold ventilation systems to various coal mining companies, was engaged in coal mine employment with employer. The administrative law judge considered the claim pursuant to the regulations set forth in 20 C.F.R. Part 718 and accepted the parties' stipulation that claimant had a totally disabling pulmonary impairment under 20 C.F.R. §718.204(c) (2000). The administrative law judge determined that the medical opinions of record supported a finding that claimant has pneumoconiosis arising out of coal mine employment and is totally disabled due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a)(4), 718.203(b), 718.204(b) (2000). Accordingly, benefits were awarded.

In its Decision and Order, the Board held that the administrative law judge did not err in applying the law of the United States Court of Appeals for the Third Circuit or in determining that claimant's work for employer constituted coal mine employment. *Meakin v. Joy Technologies, Inc.*, BRB No. 98-0311 BLA (May 6, 1999), slip op. at 3-5. The Board affirmed the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(3) (2000), but vacated the administrative law judge's findings pursuant to Sections 718.202(a)(4), 718.203(b), and 718.204(b) (2000) and remanded the case to the administrative law judge for reconsideration. *Id*. at 5-8.

On remand, the administrative law judge determined that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4) (2000), based upon the medical opinion of Dr. Suen. The administrative law judge also relied upon Dr. Suen's opinion to find that the evidence of record, as a whole, was sufficient to establish the existence of pneumoconiosis under Section 718.202(a) (2000), in accordance with the decision of the United States Court of Appeals for the Third Circuit in *Penn Allegheny*

Coal Co. v. Williams, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). Pursuant to Section 718.204(b) (2000), the administrative law judge determined that the evidence supported a finding that claimant is totally disabled due to pneumoconiosis. Accordingly, benefits were awarded.

In the Board's most recent Decision and Order, the Board vacated the administrative law judge's findings with respect to the opinions of Drs. Suen, Fino, Kleinerman and Castle under Sections 718.202(a) and 718.204(b) and remanded the case to the administrative law judge for reconsideration. *Meakin v. Joy Technologies, Inc.*, BRB No. 00-0280 BLA-A (Dec. 27, 2000), slip op. at 3-8. On remand, the administrative law judge again determined, based upon Dr. Suen's opinion, that claimant established the existence of pneumoconiosis and total disability due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits and designated February 1, 1985, as the date on which claimant became entitled to benefits.

Employer argues on appeal that the administrative law judge did not properly weigh the evidence relevant to Sections 718.202(a)(4) and 718.204(b) and did not comply with the Board's instructions on remand. Employer also contends that the administrative law judge erred in determining that its liability for benefits began on February 1, 1985. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a brief in this appeal.[3]

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 applicable 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), the administrative law judge reconsidered the medical opinions of Drs. Suen, Kleinerman, Fino, Castle, and Robbins. With respect to the opinion in which Dr. Suen diagnosed pneumoconiosis, the administrative law judge determined that despite the inconsistencies in Dr. Suen's statements regarding the presence of pneumoconiosis on x-ray and CT scan and the extent to which claimant's symptoms were consistent with idiopathic interstitial fibrosis, Dr. Suen's opinion was entitled to great weight. Decision and Order at 15, citing Hearing Transcript at 40-50, 56. The administrative law judge relied upon the fact that in addition to the imaging evidence, Dr. Suen referred to claimant's history of coal dust exposure and other factors in rendering his opinion. *Id*. The administrative law judge concluded that Dr. Suen's opinion outweighed the contrary opinions of Drs. Fino, Kleinerman, and Castle, and was sufficient to establish the existence of pneumoconiosis under Section 718.202(a) and total

[3]Claimant died on October 24, 1997. Claimant's son and surviving spouse are continuing to pursue the claim on behalf of claimant's estate.

disability due to pneumoconiosis pursuant to Section 718.204(c). Decision and Order at 13-15; Director's Exhibit 9; Claimant's Exhibits 14, 16; Employer's Exhibit 1.

Regarding the administrative law judge's consideration of Dr. Kleinerman's opinion, employer alleges that the administrative law judge failed to explain his decision to accord little weight to Dr. Kleinerman's determination that claimant did not have pneumoconiosis or any other coal dust related disease process. This contention is without merit. The administrative law judge rationally found that because Dr. Kleinerman expressed the belief that simple pneumoconiosis does not progress in the absence of additional coal dust exposure and relied upon this belief, in part, in reaching his conclusions, his opinion was entitled to diminished weight. Decision and Order at 15-16; Employer's Exhibits 2, 6; *see* 20 C.F.R. §718.201(c); *Plesh v. Director, OWCP*, 71 F.3d 103, 109, 20 BLR 2-30, 2-41 (3d Cir. 1995).

Employer also asserts that the administrative law judge did not properly weigh the opinion of Dr. Castle, as the administrative law judge did not provide an adequate rationale for discrediting this opinion. We disagree. Regarding Dr. Castle's opinion, that claimant does not have pneumoconiosis or any other coal dust related disease, the administrative law judge rationally determined that it was entitled to little probative weight on the ground that Dr. Castle did not address evidence that contradicted his conclusion. Decision and Order at 17; Employer's Exhibit 8; *see Carson*, *supra*; *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

Employer asserts with respect to the administrative law judge's consideration of Dr. Suen's opinion that the administrative law judge did not adequately address the inconsistencies in Dr. Suen's opinion and did not fully consider the aspects of Dr. Suen's opinion which render it undocumented and unreasoned. In particular, employer identifies Dr. Suen's reliance upon a thirty-year history of coal dust exposure, which contrasts with the administrative law judge's determination that claimant worked for 15.61 years as a miner.

We find that employer's contentions regarding the extent to which the administrative law judge considered the conflicting statements that Dr. Suen made regarding the x-ray evidence, the CT scans, and the possibility that claimant had idiopathic pulmonary fibrosis, rather than pneumoconiosis are without merit. As indicated above, the administrative law judge noted the presence of these inconsistencies, but determined that they did not detract from Dr. Suen's opinion, as the doctor relied on data other than imaging and ultimately reaffirmed his diagnosis of a coal dust related disease process. Decision and Order at 13-15. In light of the fact that the administrative law judge, in his role as fact-finder, is accorded broad discretion in assessing the probative value of the medical evidence of record, the administrative law judge acted

within the bounds of this discretion in his treatment of this aspect of Dr. Suen's opinion. *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Risher v. Director, OWCP*, 940 F.2d 327, 331, 15 BLR 2-186 (8th Cir. 1991); *Director, OWCP v. Siwiec*, 894 F.2d 635, 639, 13 BLR 2-259 (3d Cir. 1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

Employer is correct, however, in maintaining that the administrative law judge did not address the discrepancy between his finding of 15.61 years of coal mine employment and Dr. Suen's reliance upon a thirty-year history of exposure to coal dust. This omission is significant, because the administrative law judge identified Dr. Suen's reference to the length of claimant's coal mine dust exposure as one of the factors supporting the doctor's diagnosis of pneumoconiosis. Decision and Order at 15. We must, therefore, vacate the administrative law judge's crediting of Dr. Suen's opinion and remand the case to the administrative law judge for reconsideration of this opinion both under Section 718.202(a)(4) and as weighed against the other evidence of record relevant to Section 718.202(a). *See Williams, supra*; *Carson v. Westmoreland Coal Co.*, 19 BLR 1-18 (1994); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). We must also vacate the administrative law judge's finding that claimant established that pneumoconiosis was a substantially contributing cause of his total disability pursuant to Section 718.204(c), as the administrative law judge relied upon his weighing of Dr. Suen's opinion under Section 718.202(a) in rendering his findings under Section 718.204(c). Decision and Order at 18.

With respect to the administrative law judge's consideration of the opinion of Dr. Fino, employer argues that the administrative law judge did not explain how or why he reached the conclusion that Dr. Fino's opinion was not persuasive. Decision and Order at 16. We agree. In his Decision and Order on Remand, the administrative law judge listed the factors that Dr. Fino relied upon, *i.e.*, blood gas study results, the negative x-rays and CT scans, and the rapid onset of claimant's symptoms several years after he left the mines and then stated that he found Dr. Fino's view unconvincing because the doctor did not "account for the effects of Mr. Meakin's 15 years of coal mine dust exposure in ruling out that exposure in the development of the Miner's pulmonary disease." Decision and Order at 16; Employer's Exhibits 4, 9. The administrative law judge did not, however, set forth his reasons for apparently determining that Dr. Fino's explanation of why he excluded coal dust inhalation as a source of claimant's pulmonary condition was inadequate. Thus, the administrative law judge's finding with respect to Dr. Fino's opinion does not accord with the Administrative 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), and must be vacated.[4] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162

[4]The Administrative Procedure Act requires each adjudicatory decision to include

(1989); *Fetterman v. Director, OWCP*, 7 BLR 1-688 (1985); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996 (1984).

On remand, the administrative law judge must reconsider the opinions of Drs. Suen and Fino pursuant to Sections 718.202(a) and 718.204(c). In addressing these opinions, the administrative law judge must determine their relative probative weight, based upon an analysis of the physicians' reasoning and the documentation upon which they rely, and must set forth his findings, including the underlying rationale, in detail. *See McCune, supra*.

Finally, employer contends that the administrative law judge erred in altering his prior finding that claimant's entitlement to benefits began on February 1, 1995. This contention has merit. In his initial Decision and Order, the administrative law judge designated February 1, 1995, the first day of the month in which claimant filed his application for benefits as the date employer's liability for benefits began. 1997 Decision and Order at 8. None of the parties contested this finding on appeal and the administrative law judge has not been called upon to reconsider it. It appears, therefore, that the reference in the administrative law judge's second Decision and Order on Remand to the year 1985, rather than 1995, was most likely the result of a typographical error. Consequently, we vacate the administrative law judge's finding in this regard. On remand, if the administrative law judge finds claimant entitled to benefits, he must clarify his finding with respect to the date of onset of claimant's total disability due to pneumoconiosis in accordance with 20 C.F.R. §718.503(b).

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a statement of "findings and conclusions, and the reasons or bases therefore, on all material issues of fact, law or discretion presented on the record...." 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).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits on Remand from the Benefits Review Board is affirmed in part and vacated in part and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge