BRB No. 99-0417 BLA

JACOB CLINE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DECISION and ORDER
	)	
Party-in-Interest	)	

Appeal of the Decision and Order on Remand-Award of Medical Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Natalie D. Brown (Jackson & Kelly PLLC), Lexington, Kentucky, for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand-Award of Medical Benefits (96-BLA-1520) of Administrative Law Judge Thomas F. Phalen, Jr. 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 is

[1]Claimant was previously awarded benefits by the Social Security Administration on a Part B claim. *See* Director's Exhibits 1, 9, 11. Part B recipients who file Part C claims subsequent to March 1, 1978, such as the instant claim, *see* Director's Exhibit 1, are limited to medical benefits only under the Black Lung Benefits Reform Act. 20 C.F.R. §725.701A; *see* 30 U.S.C. §924a; *Kosh v. Director, OWCP*, 8 BLR 1-168, 1-171 (1985), *aff'd* 791 F.2d

before the Board for a second time.[2] The administrative law judge concluded that the sole issue before him on remand was whether claimant's medical treatment and bills arising thereunder were related to pneumoconiosis.[3] Decision and Order on Remand at 7. The administrative law judge accorded greatest weight to the opinion of claimant's treating physician that claimant's medical treatment was related to pneumoconiosis and accordingly concluded that employer was liable for medical

---

918 (3d Cir. 1986)(table).

[2]The instant medical benefits only claim was filed on July 11, 1979. Director's Exhibit 1. The Social Security Administration deputy commissioner determined that claimant was entitled to benefits. Director's Exhibit 5. On April 24, 1980, the Department of Labor issued an Amended Award of Benefits. Director's Exhibit 6. On January 20, 1982, employer through it's executive vice president of claims, signed an Agreement to Pay Medical Benefits. Director's Exhibit 8. On March 18, 1982, the district director issued an Award of Benefits which stated that employer would pay reasonable and necessary medical expenses starting July 19, 1979. Director's Exhibit 9. Old Republic Insurance Company subsequently indicated that it would not pay the bills submitted by claimant and his medical providers. Director's Exhibits 14, 16, 17, 19, 20. Claimant subsequently requested a hearing because of employer's refusal to pay his medical bills, Director's Exhibit 27, and the case was transferred to the Office of Administrative Appeals Judges, Director's Exhibit 29. By Order dated December 12, 1990 Administrative Law Judge Bernard J. Gilday remanded the case to the district director for "full compliance" with 20 C.F.R. §727.707. On March 2, 1994, the district director issued a Proposed Decision and Order finding that employer must pay the disputed medical bills. Director's Exhibit 30. Employer requested a hearing, Director's Exhibit 30, and the case was transferred to the Office of Administrative Law Judges. The administrative law judge subsequently issued a Decision and Order awarding benefits. Subsequent to an appeal by employer, the Board issued a Decision and Order vacating the award of benefits. *Cline v. Island Creek Coal Co.*, BRB No. 97-1318 BLA (Jun. 19, 1998)(unpub.). The Board held that the administrative law judge erred in failing to consider the holding in *Doris Coal Co. v. Director, OWCP* [*Stiltner*], 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991). The Board also instructed the administrative law judge to consider the holding of any decision issued by the United States Court of Appeals for the Sixth Circuit in *Glen Coal Co. v. Seals*, 147 F.3d 502, 21 BLR 2-398 (6th Cir. 1998)(Boggs, J., concurring; Moore, J., concurring and dissenting), *reversing and remanding, Seals v. Glen Coal Co.*, 19 BLR 1-80 (1995)(*en banc*)(Brown, J., concurring). On December 21, 1998, the administrative law judge issued the Decision and Order on Remand-Award of Medical Benefits from which employer now appeals.

[3]The bills in question concerned medical treatment in the years 1986 and 1987. *See* Decision and Order on Remand at 4-7.

benefits during this time period. Accordingly medical benefits were awarded.

On appeal, employer contends that the administrative law judge erred in failing to address the relative qualifications of the physicians of record and further erred in substituting his opinion for the opinions of those physicians, Drs. Dahhan, Tuteur, Fino and Spagnolo, who concluded that claimant's medical treatment was unrelated to pneumoconiosis. Finally, employer asserts that the administrative law judge erred in according greatest weight to the opinion of claimant's treating physician, Dr. Smith, without providing an affirmable basis for doing so. Neither claimant nor the Director, Office of Workers' Compensation Programs (the Director), has filed a brief 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 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).

In *Glen Coal Co. v. Seals*, 147 F.3d 502, 21 BLR 2-398 (6th Cir. 1998)(Boggs, J., concurring; Moore, J., concurring and dissenting), *reversing and remanding, Seals v. Glen Coal Co.*, 19 BLR 1-80 (1995)(*en banc*)(Brown, J., concurring), the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this claim arises, held that claimant must affirmatively establish that his medical bills are related to pneumoconiosis. *See Seals*, *supra*; *see also Gulf & Western Industries v. Ling*, 176 F.3d 226, 21 BLR 2-570 (4th Cir. 1999); *General Trucking Corp. v. Salyers*, 175 F.3d 322, 21 BLR 2-565 (4th Cir. 1999); *Doris Coal Co. v. Director, OWCP* [*Stiltner*], 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991).

Initially, we reject employer's contention that the administrative law judge impermissibly relied upon the opinion of claimant's treating physician, Dr. Smith. The administrative law judge found that Dr. Smith's treatment of claimant during the 1986-1987 period at issue made the physician more familiar with the course of claimant's disease. Decision and Order on Remand at 10. The administrative law judge further concluded that all the hospital records compiled by Dr. Smith demonstrate the existence of pneumoconiosis and that the medications prescribed by the physician were to improve restricted breathing brought about by the disease. Decision and Order on Remand at 10. Inasmuch as the administrative law judge has provided a rational basis for crediting the opinion of claimant's treating physician, Dr. Smith, we reject employer's assertion of error and hold that the administrative law judge's determination constitutes a permissible exercise of his discretion. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir.

1995); *Tussey v. Island Creek Coal Co.,* 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993).[4]

Employer also contends that the administrative law judge erred in failing to address the relative qualifications of the physicians of record and that the failure to do so in the instant case is particularly egregious in view of the relative lack of qualifications possessed by Dr. Smith, the physician whose medical opinions were relied upon by the administrative law judge. An administrative law judge must generally address the qualifications of physicians as part of his duty to address all relevant evidence of record. *See Hall v. Director, OWCP*, 12 BLR 1-80 (1988); *see generally Lafferty v. Cannelton Industries*, *Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1989). We hold, however, that the failure of the administrative law judge to address the relative qualifications of these physicians in the instant case constitutes harmless error, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), inasmuch as the administrative law judge's proper crediting of Dr. Smith, *see* discussion, *supra*, is more fundamental to the issue raised in the instant case, *i.e*., whether claimant's medical treatment was related to pneumoconiosis. *See Seals*, *supra*.

In the instant case, the administrative law judge has properly concluded that claimant carried his burden of establishing that his medical bills were related to pneumoconiosis, *see Seals*, *supra*, by permissibly according greatest weight to the medical conclusion of Dr. Smith, who had first-hand knowledge of claimant's treatment during the period at issue. Accordingly, we affirm the administrative law judge's determination that claimant has established entitlement to medical benefits. *See Seals*, *supra*.

Accordingly, the administrative law judge's Decision and Order on Remand-Award of Medical Benefits is affirmed.

SO ORDERED.

---

[4]Inasmuch as the administrative law judge has provided a rational basis for crediting the opinion of Dr. Smith, we need not address employer's assertions that the administrative law judge impermissibly substituted his opinion for those of the other non-treating physicians. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge