BRB No. 00-0484 BLA

JOSEPH E. ANGELILLI	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED:
	)	
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 on Remand-Awarding Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals the Decision and Order on Remand-Awarding Benefits (98-BLA-110) of Administrative Law Judge Daniel L. Leland 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 before the Board for a second time. Initially, the administrative law judge found that the parties stipulated to a coal mine employment history of at least twenty-six years and that the instant claim constituted a duplicate claim

[1] Claimant first filed a claim for benefits on July 6, 1983. Director's Exhibit 27. In a Decision and Order dated April 27, 1989, Administrative Law Judge Ralph A. Romano credited claimant with thirty-three years of coal mine employment, and found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to

pursuant to 20 C.F.R. §725.309(d). The administrative law judge further found that claimant established a material change in conditions as the newly submitted evidence shows, and the parties stipulated, that claimant now has a totally disabling respiratory impairment, an element of entitlement which was adjudicated against him in his prior claim. *See* 20 C.F.R. §718.204(c). Turning to the merits, the administrative law judge found that while claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), it was established pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge further found that claimant established that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Finally the administrative law judge concluded that claimant's totally disabling respiratory impairment was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were awarded.

Subsequent to an appeal by employer, the Board vacated the administrative law judge's award of benefits. *Angelilli v. Consolidation Coal Co.*, BRB No. 98-1393 BLA (Sep. 7, 1993)(unpub.). The Board vacated both the administrative law judge's finding of the existence of pneumoconiosis pursuant to Section 718.202(a)(4), *Angelilli*, slip op. at 3-6, and the finding that claimant established that his totally disabling respiratory impairment was due to pneumoconiosis pursuant to Section 718.204(b), *Angelilli*, slip op. at 6, and remanded the

---

20 C.F.R. §§718.202(a)(1) and 718.203(b). *Id*. Judge Romano further found that the weight of the relevant evidence under 20 C.F.R. §718.204(c)(1)-(4) was sufficient to establish total disability. *Id*. On these bases, Judge Romano awarded benefits. *Id*. Employer appealed, and the Board reversed Judge Romano's decision awarding benefits, holding that Judge Romano erred in failing to determine whether claimant established that his total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), and that there was no evidence of record which, even if credited, could support such a finding under Section 718.204(b). *See Angelilli v. Consolidation Coal Co.*, BRB No. 87-2274 BLA (Apr. 27, 1989)(unpublished). Claimant took no further action until filing a second claim on December 19, 1990. Director's Exhibit 28. This claim was denied on May 30, 1991 by the district director, who found that the existence of pneumoconiosis arising out of coal mine employment was established, but that the new evidence did not establish total disability and total disability due to pneumoconiosis under Section 718.204(c), (b) and, therefore, did not establish a material change in conditions pursuant to 20 C.F.R. §725.309. *Id*. Claimant took no further action in pursuit of benefits until filing a third claim on March 10, 1997, Director's Exhibit 1, which is the subject of the appeal before us.

[2] The Board affirmed, as unchallenged on appeal, the administrative law judge's findings that the parties stipulated to at least twenty-six years of coal mine employment and to total disability under 20 C.F.R. §718.204(c), as well as the administrative law judge's findings under 20 C.F.R. §§725.309, 718.202(a)(1)-(3) and 718.203(b). *Angelilli*, slip op. at 2 n.2; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

case for the administrative law judge to reweigh the opinions of Drs. Devabhaktuni, Renn and Fino under Sections 718.202(a)(4) and 718.204(b). *Angelelli*, slip op. at 6-7.

On remand, the administrative law judge again found that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4), Decision and Order on Remand at 1-4, and that claimant again established that pneumoconiosis was a contributing cause of his totally disabling respiratory impairment pursuant to Section 718.204(b), Decision and Order on Remand at 4-5. Accordingly, benefits were awarded.

On appeal, employer asserts that the administrative law judge erred in failing to weigh together all the evidence relevant to the existence of pneumoconiosis pursuant to Section 718.202(a); erred in concluding that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4); and erred in his analysis of the evidence at Section 718.204(b). Neither claimant nor the Director, Office of Workers' Compensation Programs, 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).

First, employer contends that the administrative law judge erred in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(4) inasmuch as he erred in concluding that the opinions of Dr. Devabhaktuni, which concluded that claimant suffered from pneumoconiosis, Director's Exhibits 10, 28; Employer's Exhibit 1,were well-reasoned and credible. Employer further argues that the administrative law judge erred in according lesser weight to the opinions of Dr. Renn, Director's Exhibits 22, 27; Employer's Exhibits 4, who opined that claimant's progressive lung disease arose out of tobacco smoking rather than coal dust exposure. Finally, employer argues that the administrative law judge erred in discrediting the opinion of Dr. Fino that claimant suffered from no coal dust related disease. Employer's Exhibits 2, 5.

When this case was previously before the Board, it held that while the administrative law judge could rely upon the opinions of Dr. Devabhaktuni as they were the most recent opinions, *see Thorn v. Itmann Coal Co.*, 3 F.3d 713, 18 BLR 2-16 (4th Cir. 1993), the administrative law judge erred in failing to explain fully his conclusions that Dr. Devabhaktuni had a more complete picture of the miner's health than did Dr. Fino and Dr. Renn. *Angelilli*, slip op. at 5. The Board further held that the administrative law judge erred in concluding that Dr. Renn's opinion was hostile to the Act and erred in rejecting Dr. Fino's opinion merely because he did not examine claimant or explain whether claimant's asthma

could be aggravated by coal dust exposure. *Angelilli*, slip op. at 5-6.

On remand, the administrative law judge found the opinions of Dr. Devabhaktuni to be well reasoned. Decision and Order on Remand at 3. The administrative law judge further found that Dr. Renn's opinions were entitled to less weight because Dr. Renn failed to explain how he justified completely ruling out coal dust exposure as a cause of claimant's chronic bronchitis and attributed it all to tobacco, when claimant's tobacco exposure ended prior to his coal dust exposure. Decision and Order on Remand at 4. Lastly, with regard to Section 718.202(a)(4), the administrative law found that Dr. Fino's opinion was entitled to less weight inasmuch as his conclusion, that claimant's asthmatic bronchitis was not related to coal dust exposure, was not well-reasoned or well-supported.

Having reviewed the administrative law judge's Decision and Order and the evidence, however, we conclude that the administrative law judge properly found that Dr. Devabhaktuni's opinions were entitled to the greatest weight and thus support a finding of pneumoconiosis pursuant to Section 718.202(a)(4). In a proper exercise of his discretion the administrative law judge found that Dr. Devabhaktuni's opinions were well-reasoned inasmuch as his opinions were based on a thorough examination of claimant. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Moreover, the administrative law judge permissibly accorded less weight to the opinions of Drs. Renn and Fino as he found that they failed to explain fully the bases of their conclusions. *See York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Cooper v. United States Steel Corp.*, 7 BLR 1-842 (1985); *White v. Director, OWCP*, 6 BLR 1-368, 1-371 (1983). We conclude, therefore, that the administrative law judge has complied with the Board's remand instructions, *see Hall v. Director, OWCP*, 12 BLR 1-80 (1988), and we affirm the administrative law judge's finding that claimant has established the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Nevertheless, we must remand this case to the administrative law judge for further consideration. When this case was previously before the Board, the Board rejected employer's assertions that the administrative law judge erred in weighing the medical opinion evidence separately, rather than weighing it together with the x-ray evidence at Section 718.202(a)(1). The Board rejected employer's reliance upon the holding of the United States Court of Appeals for the Third Circuit in *Penn Allegheny v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). The Board declined to apply the holding of *Williams* in this case, arising within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, which had not, at that time, adopted the *Williams* holding, in "order to maintain as much consistency in [its] decisions as possible." *Angelilli*, slip op. at 3. Subsequent to the issuance of the Board's previous decision as well as the administrative law judge's current Decision and Order on Remand, however, the Fourth Circuit held that while Section

718.202(a) lists alternative methods for establishing the existence of pneumoconiosis, the administrative law judge must, nonetheless, weigh all types of relevant evidence together to determine whether a claimant suffers from the disease. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2- (4th Cir. 2000). Consequently, on remand, the administrative law judge must weigh all of the evidence relevant to Section 718.202(a)(1)-(4) together in determining whether claimant has established the existence of pneumoconiosis. *Id*.

Employer further asserts that the administrative law judge failed to comply with the Board's remand instructions and erred in concluding that claimant's totally disabling respiratory impairment was due to pneumoconiosis pursuant to Section 718.204(b). Employer argues that the administrative law judge erred in failing to recognize that Dr. Renn and Dr. Fino both acknowledged that claimant did suffer from some respiratory or pulmonary impairment, but nevertheless concluded that such an impairment was not related to pneumoconiosis. *See* Employer's Exhibits 2, 4, 5.

When this case was previously before the Board, the Board held that the administrative law judge erred in rejecting the opinions of Drs. Renn and Fino regarding disability causation because they believed, contrary to the administrative law judge's finding, that claimant did not have pneumoconiosis. Rather, the Board held that the Fourth Circuit has held that medical opinions, like those of Drs. Renn and Fino in the instant case, which acknowledge the existence of a respiratory or pulmonary impairment, but nevertheless conclude that an ailment other than pneumoconiosis caused the miner's total disability, are relevant because they directly rebut the miner's evidence that pneumoconiosis contributed to disability. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995). Accordingly, the Board vacated the administrative law judge's findings with respect to the medical opinions of Drs. Devabhaktuni, Renn and Fino under Section 718.204(b) and remanded the case for further consideration pursuant to the holdings in *Hicks*, and *Ballard* under this section, if reached.

On remand, the administrative law found that Dr. Devabhaktuni's well-reasoned opinion was entitled to the greatest weight at Section 718.204(b) and that since neither Dr. Renn nor Dr. Fino rendered reasoned opinions regarding whether claimant's coal dust exposure contributed to or substantially aggravated his condition pursuant to Section 718.204(b), their opinions were entitled to little weight. Decision and Order on Remand at 4. The administrative law judge, thus, concluded that, after further consideration, he was reaffirming his prior conclusions at Section 718.204(b). Decision and Order on Remand at 4-5.

In finding that Dr. Renn's opinion was not reasoned, the administrative law judge found that while Dr. Renn acknowledged that tobacco induced chronic bronchitis will cease or diminish after the cessation of smoking, Dr. Renn could not explain how he completely ruled out coal dust exposure as a cause of the miner's chronic bronchitis, when claimant had quit smoking in 1978, prior to his 1984 retirement from coal mine employment. Regarding Dr. Fino's opinion, the administrative law judge found unreasoned Dr. Fino's explanation that claimant's respiratory condition was not related to coal mine employment because other than referring to the pattern of abnormality seen on the lung function studies, he did not elaborate on what the pattern was or what it indicated, he stated that he was relying on medical literature involving working miners as opposed to retired miners, and he stated that he was making a "dangerous leap" in ruling out the claimant's coal dust exposure as an etiology for his condition. *See* Decision and Order on Remand at 3-4; Director's Exhibits 27, 28; Employer's Exhibits 2, 4. We cannot, therefore, say that the administrative law judge did not give a rational explanation of his determination to accord the disability causation opinions of Drs. Renn and Fino less weight. *See Hicks*, *supra*; *Ballard*, *supra*; *Clark*, *supra*; *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The administrative law judge has, therefore, complied with the Board's remand instructions at Section 718.204(b) and his finding thereunder is affirmed.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge