BRB No. 97-0539 BLA

WALTER SHELL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SOUTHERN HILLS MINING COMPANY, INCORPORATED	)	
	)	
and	)	DATE ISSUED:
	)	
KENTUCKY COAL PRODUCERS SELF-INSURANCE FUND	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

James D. Holliday

, Hazard, Kentucky, for claimant.

Denise M. Davidson (Barret, Haynes, May, Carter & Roark, P.S.C.), Hazard, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (96-BLA-0814) of Administrative Law Judge Donald W. Mosser 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*. Claimant filed his claim on March 9, 1994. The administrative law judge awarded benefits under 20 C.F.R. Part 718. Employer appeals, arguing that the administrative law judge erred in finding that claimant established disability causation pursuant to 20 C.F.R. §718.204(b). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[1]

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and consistent with applicable law, they are binding upon this Board and must be affirmed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Relying on the opinions of Drs. Baker and Caudill, the administrative law judge concluded that the medical opinion evidence is minimally sufficient to prove that claimant's disability is due at least in part to pneumoconiosis. Decision and Order (D&O) at 12. Employer argues on appeal that the administrative law judge improperly credited the opinions of Drs. Baker and Caudill to find that claimant established causation pursuant to 20 C.F.R. §718.204(b). Additionally, employer argues that the administrative law judge erred by not relying on Dr. Dahhan's opinion that claimant's disability is solely the result of cigarette smoking.

[1] The administrative law judge found that claimant established over twenty-nine years of coal mine employment, and the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b). The administrative law judge also found that claimant established total disability pursuant to 20 C.F.R. §718.204(c)(1) and (c)(4). We affirm these findings as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Initially we address the administrative law judge's treatment of Dr. Dahhan's opinion. Under Section 718.204(b), the administrative law judge assigned less probative weight to Dr. Dahhan's opinion that claimant's respiratory impairment is due solely to smoking, noting that the doctor mistakenly believed that the miner did not have pneumoconiosis. D&O at 11; Director's Exhibit (DX) 32. Contrary to the administrative law judge's finding, however, medical opinions concerning the etiology of claimant's respiratory impairment may not be rejected merely because they are based in part on a negative x-ray when the x-ray evidence is not overwhelmingly positive. *See Moore v. Dixie Pine Coal Co.*, 8 BLR 1-334 (1985). In the instant case, although the administrative law judge determined that claimant established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), seven out of eleven x-ray interpretations of record are negative for pneumoconiosis. Moreover, Dr. Dahhan's negative reading of the June 23, 1994 film is corrobarated by a negative reading of the same film by Dr. Sargent, a Board-certified radiologist and B-reader.[2] DXs 32, 35. Thus, because the x-ray evidence in this case is not overwhelmingly positive, we cannot affirm the administrative law judge's rejection of Dr. Dahhan's opinion on the grounds stated.[3] We, therefore, vacate the administrative law judge's determination that claimant established causation pursuant to 20 C.F.R. §718.204(b).

Furthermore, we note that the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this claim arises, has held pursuant to 20 C.F.R. §718.204(b) that a miner must establish that his totally disabling respiratory impairment is due "at least in part" to pneumoconiosis. *Adams v. Director, OWCP*, 886 F.2d 818, 825, 13 BLR 2-52, 2-63 (6th Cir. 1989). The Sixth Circuit Court of Appeals, however, has also held that evidence that a miner's pneumoconiosis has played only an infinitesimal or *de minimis* part in a miner's totally disabling respiratory impairment is insufficient to establish disability causation under *Adams*. *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997). Rather, a miner must affirmatively establish that pneumoconiosis is a contributing cause of some discernible consequence to his totally disabling respiratory impairment. *Id*.

With respect to Dr. Baker's opinion, the administrative law judge found that in the

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[2] The June 23, 1994 film was read as positive for pneumoconiosis by Drs. Mathur and Marshall, who are also Board-certified radiologists and B-readers. Director's Exhibits 34, 37.

[3] Furthermore, the United States Court of Appeals for the Fourth Circuit has held that a physician's opinion that acknowledges the presence of a respiratory or pulmonary impairment but nevertheless concludes that a condition other than pneumoconiosis caused the miner's total disability, is relevant because it directly rebuts the miner's evidence that pneumoconiosis contributed to his disability. *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995). Because Dr. Dahhan specifically diagnosed that claimant has a totally disabling obstructive respiratory impairment, the administrative law judge's decision to assign less weight to Dr. Dahhan's opinion on causation because the physician did not also diagnose coal worker's pneumoconiosis appears inconsistent with *Ballard*. *Id*.

doctor's original report, Dr. Baker opined that claimant had a moderate respiratory impairment which he attributed to cigarette smoking and coal dust exposure. D&O at 11; DX 9. Regarding a subsequent letter from Dr. Baker, the administrative law judge also found that the doctor wrote that claimant's respiratory conditions arose primarily from cigarette smoking although there may have been a small contribution from coal dust exposure. D&O at 11; DX 11. Additionally, the administrative law judge noted that Dr. Baker testified in deposition that he could not rule out that the primary cause of claimant's disability is pneumoconiosis. D&O at 11; DX 36 at 12.

In weighing Dr. Baker's opinion at Section 718.204(b), the administrative law judge concluded that "although this physician's opinion is somewhat equivocal as to the degree to which Mr. Shell's coal dust exposure contributes to his respiratory impairment, it tends to support a finding that the coal dust 'at least in part' causes the disability." D&O at 11. Because it is unclear from the administrative law judge's analysis whether he considers Dr. Baker's opinion to be sufficient to establish that pneumoconiosis is more than a *de minimis* factor in causing claimant's totally disabling respiratory impairment, *see Smith, supra*, we instruct the administrative law judge to reconsider Dr. Baker's opinion in light of that standard.

Lastly, based on Dr. Caudill's status as a treating physician, the administrative law judge credited Dr. Caudill's opinion, that claimant's respiratory impairment is due to a combination of cigarette smoking and coal dust exposure, in his consideration of the conflicting medical opinions at Section 718.204(b). D&O at 11 -12; DX 36. In weighing Dr. Caudill's opinion, however, the administrative law judge acknowledged that Dr. Caudill primarily treated claimant for non-respiratory problems. D&O at 11. The administrative law judge further noted that he had some reservations in crediting Dr. Caudill's opinion as the doctor's treatment notes contain little documentation concerning his diagnosis of pneumoconiosis. *Id*. Insofar as the administrative law judge's analysis fails to address whether Dr. Caudill's opinion is sufficiently documented and reasoned, we hold that the administrative law judge erred in relying on Dr. Caudill's opinion at Section 718.204(b). We note that even a doctor's status as a treating physician is not a substitute for adequate documentation. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). A medical opinion must be reasoned and documented before the administrative law judge may accord it determinative weight based on the physician's status/expertise. *Id*. Consequently, on remand, the administrative law judge must determine whether Dr. Caudill's opinion is sufficiently documented and reasoned to establish that claimant's respiratory impairment is due at least in part to pneumoconiosis pursuant to 20 C.F.R. §718.204(b).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge