BRB No. 90-0386 BLA

BILLY HUNT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HARMAN MINING CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANIES	)	
	)	
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 John J. Forbes, Jr., Administrative Law Judge, United States Department of Labor.

Vernon M. Williams (Wolfe & Farmer), Norton, Virginia, for claimant.

William E. Berlin (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH and DOLDER, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Decision and Order (84-BLA-8582) of Administrative

Law Judge John J. Forbes, Jr., awarding benefits on a claim filed pursuant to the provisions of Title IV of the Federal

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (1988).

Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). The administrative law judge credited claimant with thirty-one years of qualifying coal mine employment, and properly considered this claim, filed on February 24, 1981, pursuant to the permanent criteria at 20 C.F.R. Part 718. *Muncy v. Wolfe Creek Collieries Coal Co.*, 3 BLR 1-627 (1981). The administrative law judge found that the evidence established total disability pursuant to 20 C.F.R. §718.204, and thus claimant was entitled to the rebuttable presumption that his total disability was due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305. The administrative law judge further found that the evidence was insufficient to establish rebuttal of that presumption, or rebuttal of the presumption that claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Accordingly, benefits were awarded. Employer appeals, contending that the administrative law judge erred in finding that rebuttal of the presumption at Section 718.305 was not established. Claimant responds, urging affirmance of the decision below. The Director, Office of Workers' Compensation Programs, has not participated 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 by 30 U.S.C. §932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence and contains no reversible error. Employer asserts that the opinions of Drs. Stewart and Garzon establish that claimant does not have pneumoconiosis and that his impairment did not arise out of coal mine employment, and that the administrative law judge, in finding the evidence insufficient to establish rebuttal at Section 718.305(d), failed to accord proper weight to said opinions and improperly relied on the conflicting opinions of Drs. Sutherland, Kanwal, Wright and Robinette. Contrary to employer's arguments, however, the administrative law judge accurately reviewed the medical opinions of record and the qualifications of Drs. Stewart and Garzon, and permissibly accorded greater weight to claimant's treating physician, Dr. Sutherland, whose opinion that claimant is totally disabled due to pneumoconiosis arising out of coal mine employment is buttressed by the opinions of Drs. Kanwal, Wright and Robinette. Decision and Order at 6-16;

see Revnack v. Director, OWCP, 7 BLR 1-771 (1985). Although the administrative law judge acknowledged that the qualifications of Dr. Stewart were superior to those of the physicians supportive of claimant's position,[1] he was not required to defer to Dr. Stewart's opinion, *see Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), but instead acted within his discretion as trier-of-fact in finding that the conflicting opinions were equally probative, thus employer failed to meet its burden of establishing rebuttal by a preponderance of the evidence. Decision and Order at 16; *see generally Gilson v. Price River Coal Co.*, 6 BLR 1-96 (1983). We, therefore, affirm the administrative law judge's findings pursuant to Section 718.305, as supported by substantial evidence.

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

[1] The record reflects that Dr. Stewart is Board-certified in internal medicine and pulmonary diseases, Employer's Exhibit 9, whereas Dr. Robinette is Board-certified in internal medicine and Board-eligible in pulmonary diseases, Claimant's Exhibit 4, and Drs. Sutherland, Kanwal and Wright possess no special qualifications.

NANCY S. DOLDER
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge