

BRB No. 93-0711 BLA

ELVENA FARRIS)
(Widow of DALLAS FARRIS))

)
Claimant-Respondent)

)
v.)

)
SHAMROCK 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 Revised Decision and Order of Charles W. Campbell,
Administrative Law Judge, United States Department of Labor.

John C. Dixon, Barbourville, Kentucky, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen Chartered),
Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Revised Decision and Order (89-BLA-0799) of
Administrative Law Judge Charles W. Campbell 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.* (the Act). This case is before the
Board for the second time. The miner filed a claim on January 28, 1987, and died on
February 9, 1988. Claimant, the miner's widow, filed a survivor's claim on February
29, 1988. In his first Decision and Order, the administrative law judge found that
claimant established thirteen and one-quarter years of coal mine employment. The

administrative law judge next considered the miner's claim and found that the miner established that he was totally disabled due to pneumoconiosis which arose from his coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b), 718.204(b) and (c)(1). The administrative law judge then considered the survivor's claim and determined that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Accordingly, benefits were awarded on the miner's

claim and denied on the survivor's claim. On appeal, the Board affirmed the administrative law judge's findings the miner failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), vacated the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(4) and remanded the case for further findings at subsection (a)(4). The Board next determined that the administrative law judge's weighing of the evidence pursuant to 20 C.F.R. §718.204(c)(1) and (2) was proper, but concluded that the administrative law judge did not weigh all contrary and probative evidence and remanded the case for further consideration of all relevant evidence, including contrary and probative evidence pursuant to *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987) and *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986). The Board also vacated the administrative law judge's findings pursuant to 20 C.F.R. §718.204(b) and remanded the case for further consideration of all relevant evidence and for the administrative law judge to provide an explicit rationale for crediting or rejecting evidence in making his findings pursuant to 20 C.F.R. §718.204(b). The Board also noted that the administrative law judge's denial of the survivor's claim was not challenged on appeal. See *Farris v. Shamrock Coal Co.*, BRB No. 90-1078 BLA (May 21, 1992)(unpub.). On remand, the administrative law judge found that the miner established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.204(b), (c)(1) and (4). Accordingly, benefits were again awarded on the miner's claim. On appeal, employer challenges the administrative law judge's weighing of the evidence pursuant to 20 C.F.R. §§718.202(a)(4) and 718.204(b). Claimant responds in support of the administrative law judge's Decision and Order and the Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond to this appeal.

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

Employer initially challenges the administrative law judge's weighing of the opinions of Drs. Broudy and Baker pursuant to 20 C.F.R. §718.202(a)(4).¹ Dr. Baker

¹The administrative law judge's findings pursuant to 20 C.F.R. §718.204(c)(1)-(4) and the administrative law judge's denial of benefits on the survivor's claim are affirmed as they are unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

diagnosed occupational pneumoconiosis, lung cancer, chronic obstructive pulmonary disease and chronic bronchitis. He also checked the "yes" box in answer to the question of whether claimant's condition was related to his coal mine employment, and stated that this opinion was based on abnormal chest x-ray, symptoms and duration of exposure. See Director's Exhibit 16. The administrative law judge permissibly found this opinion to be a reasoned opinion which indicates that claimant's chronic obstructive pulmonary disease falls within the regulatory definition of pneumoconiosis. See Revised Decision and Order at 9; 20 C.F.R. §718.201; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Dr. Broudy stated that he did not believe that the miner had pneumoconiosis, that he believes the restrictive and obstructive defects on spirometry are due to carcinoma of the lung and cigarette smoking, and that he does not believe there has been any significant pulmonary disease or respiratory impairment which has arisen from the miner's occupation as a coal worker. See Director's Exhibit 17. The administrative law judge permissibly assigned less weight to this opinion as Dr. Broudy did not provide any explanation as to why the miner's more than thirteen years of coal mine employment, along with his history of cigarette smoking and lung cancer, did not play a significant part in the miner's pulmonary disease or respiratory impairment.² See *Clark, supra*. Employer's argument on this issue is therefore rejected.

Employer also argues that the administrative law judge failed to properly address the underlying documentation which weighed against Dr. Baker's diagnosis of pneumoconiosis and erred in failing to properly address the superior qualifications of Dr. Broudy. However, the administrative law judge permissibly considered all of the evidence of record, including the evidence contrary to Dr. Baker's opinion, and Dr. Broudy's qualifications. See Revised Decision and Order at 5-7; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). As the administrative law judge's treatment of the reports of Drs. Broudy and Baker is within his discretion and supported by the evidence of record it is affirmed. Thus, the administrative law judge's finding that claimant established the existence of pneumoconiosis pursuant 20 C.F.R. §718.202(a)(4) is also affirmed as it is supported by substantial evidence.

Employer next contends that the administrative law judge erred in weighing Dr. Baker's opinion pursuant to 20 C.F.R. §718.204(b). In support of this contention, employer argues that Dr. Baker's report is insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). We disagree. Upon weighing this opinion, the administrative law judge permissibly found that Dr.

²The administrative law judge also found the physician's use of the word "significant" to be inexact as it does not show Dr. Broudy's perception on the actual degree of the contribution. See Revised Decision and Order at 9.

Baker's conclusion that the miner was impaired by his lung cancer and his chronic obstructive pulmonary disease which was caused by his coal mine employment was a finding that the miner's impairment was due at least in part to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). See Revised Decision and Order at 9; Director's Exhibit 16; *Adams v. Director, OWCP*, 806 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *Hall v. Director, OWCP*, 12 BLR 1-133 (1989); *Lafferty, supra*. Employer's contention of error on this issue is therefore rejected.

Employer also argues that the administrative law judge failed to adhere to the Board's remand order that he provide explicit rationale for crediting or rejecting evidence pursuant to 20 C.F.R. §718.204(b). See *Farris, supra*. However, the administrative law judge permissibly found the opinions of Drs. Clarke and Broudy regarding the cause of the miner's disability to be unreasoned. See Revised Decision and Order at 8-9; *Clarke, supra*. The administrative law judge stated that he gave little weight to Dr. Clarke's opinion because, "although Dr. Clarke was aware of the miner's smoking history and the cancer in his left lung, as well as the radiation treatments, Dr. Clarke makes the unexplained statement that he had been unable to determine any other cause for the miner's disabling dyspnea other than his work in a dusty environment." See Revised Decision and Order at 8. Also, as noted earlier, the administrative law judge permissibly accorded less weight to Dr. Broudy's opinion because of his failure to explain the effect of claimant's coal mine employment on his condition. See *Clarke, supra*. As a result, the administrative law judge's finding that claimant established that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) is affirmed as it is supported by substantial evidence.

Accordingly, the administrative law judge's Revised Decision and Order awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge