BRB No. 99-0973 BLA

JOSEPH E. MASSIE	)	
	)	
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 of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton and Hayes), Bluefield, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

Jill M. Otte (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order (98-BLA-0855) of Administrative Law Judge Daniel F. Sutton 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). The administrative law judge initially noted that the parties stipulated that claimant had twenty-three years of coal mine employment and that the medical evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c). Although the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), the administrative law judge found that the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge also found that the evidence was sufficient to establish that claimant's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203 and that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge awarded benefits. On appeal, employer challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(4) and 718.204(b). Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, clarifying the Director's interpretation of the proper construction of the regulatory language contained at 20 C.F.R. §718.202(a).[1]

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

[1]Inasmuch as no party challenges the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1), (a)(2) and (a)(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Employer contends that the administrative law judge erred in finding the medical opinion evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). In finding the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge credited the opinions of Drs. Rasmussen and Forehand that claimant suffered from pneumoconiosis over the contrary opinions of Drs. Zaldivar, Jarboe, Fino, Loudon and Castle. Decision and Order at 5-6. Employer initially argues that the administrative law judge erred in not addressing whether Dr. Forehand's opinion was sufficiently reasoned. We agree. The administrative law judge failed to address whether Dr. Forehand's opinion was sufficiently reasoned.[2] *See Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

The administrative law judge also failed to explain his basis for finding that Dr. Rasmussen's opinion was supported by that of Dr. Forehand. *See* Decision and Order at 5. While Dr. Rasmussen diagnosed legal pneumoconiosis (severe pulmonary insufficiency caused by coal mine dust exposure), Director's Exhibit 10; Claimant's Exhibit 3, Dr. Forehand diagnosed clinical pneumoconiosis (radiographic evidence of coal worker's pneumoconiosis). Claimant's Exhibit 1.

We also agree with employer that the administrative law judge improperly discredited the opinions of Drs. Zaldivar, Jarboe, Fino, Loudon and Castle because they did not identify an alternative etiology for claimant's lung disease. A physician's opinion is sufficient to rule out the presence of pneumoconiosis if it effectively rules out coal mine employment as a cause of claimant's lung disease. Such an opinion need not establish a definitive alternative etiology for claimant's lung disease. *See generally Hall v. Director, OWCP*, 12 BLR 1-133 (1989); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986). We, therefore, vacate the administrative law judge's finding that the medical opinion evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and remand the case for further consideration.

[2]In an undated medical report, Dr. Forehand noted that there was [r]adiographic evidence of coal worker's pneumoconiosis." Claimant's Exhibit 1. Although Dr. Forehand also diagnosed a "[w]ork-limiting respiratory impairment of gas-exchange nature," he did not address the etiology of the impairment. *Id.*

Employer further contends that the administrative law judge erred in separately evaluating the x-ray evidence at Section 718.202(a)(1) and the medical opinions at Section 718.202(a)(4) in determining whether claimant established the existence of pneumoconiosis. Subsequent to the issuance of the administrative law judge's Decision and Order, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction the instant case arises, held that although Section 718.202(a) enumerates four distinct methods of establishing pneumoconiosis, all types of relevant evidence must be weighed together to determine whether a miner suffers from the disease.[3] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000); *see also Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). Consequently, on remand, the administrative law judge must weigh all the evidence relevant to 20 C.F.R. §718.202(a)(1) and (a)(4) together in determining whether the miner suffers from pneumoconiosis.[4] *Compton*, *supra*.

Employer also argues that the administrative law judge failed to render a separate finding regarding whether the evidence was sufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Although the administrative law judge concluded that claimant's total disability was due to

[3]We reject the Director's contention that Section 718.202(a) only requires that all evidence relevant to a determination of clinical pneumoconiosis be considered together and that all evidence relevant to a determination of legal pneumoconiosis be considered together. *See* Director's Brief at 1-2. The Fourth Circuit has specifically rejected this approach. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000).

[4]The administrative law judge properly noted that the record does not contain any biopsy evidence. *See* Decision and Order at 3. Consequently, there is no evidence to be weighed pursuant to 20 C.F.R. §718.202(a)(2). The administrative law judge also properly found that claimant was not entitled to any of the presumptions set out at 20 C.F.R. §718.202(a)(3). Decision and Order at 3.

pneumoconiosis, he did not separately consider the etiology of claimant's disability. Therefore, on remand, should the administrative law judge find that claimant has established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and that his pneumoconiosis is due to coal mine employment pursuant to 20 C.F.R. §718.203, he must then consider whether claimant's total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). *See Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

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

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge