BRB No. 04-0818 BLA

JOE R. WILCOXEN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DAVIDSON MINING, INCORPORATED	)	DATE ISSUED: 06/21/2005
	)	
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 - Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Roger D. Forman (Forman & Huber, L.C.), Charleston, West Virginia, for claimant.

Anthony J. Cicconi (Shaffer & Shaffer, PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (2003-BLA-6385) of Administrative Law Judge Michael P. Lesniak 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).[1] The administrative law judge accepted the

[1] Claimant initially filed a claim for benefits on April 29, 1998, which was denied by the district director on August 17, 1998 as claimant failed to establish any of the elements of entitlement. Director's Exhibit 1. No further action was taken until the filing of the instant claim on April 22, 2001. Director's Exhibit 2. Subsequent to the hearing

parties' stipulation of a forty-two year coal mine employment history and found that the instant claim constituted a subsequent claim pursuant to 20 C.F.R. §725.309. Decision and Order at 3-4. Pursuant to the holding of the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, in *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 1364, 20 BLR 2-227, 2-234 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), *cert. denied*, 510 U.S. 1090 (1997), the administrative law judge determined that the newly submitted x-ray and medical opinion evidence established the existence of pneumoconiosis, an element of entitlement previously adjudicated against claimant, and thus, found that claimant established a change in an applicable condition of entitlement. Decision and Order at 4-12. Turning to the merits, the administrative law judge determined that the weight of the evidence of record supported a finding that claimant suffered from pneumoconiosis; that claimant was entitled to the presumption that such pneumoconiosis arose out of coal mine employment; that claimant established the presence of a totally disabling respiratory impairment; and that the totally disabling respiratory impairment was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(b), 718.204(b), (c); Decision and Order at 12-15. Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in crediting the opinions of Drs. Cohen and Rasmussen, as supported by the opinions of Drs. Ranavaya and Gaziano, that claimant suffered from pneumoconiosis arising out of coal mine employment and was totally disabled thereby, Director's Exhibits 1, 11; Claimant's Exhibits 1, 2, 5, 6, over the contrary opinions of Drs. Zaldivar and Ranavaya, diagnosing idiopathic pulmonary fibrosis, Director's Exhibit 18; Employer's Exhibit 1, as the opinions of the former physicians were better supported and reasoned.[2] In response, claimant urges that the administrative law judge's Decision and Order be affirmed. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this appeal.[3]

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held on January 22, 2004, the administrative law judge on July 16, 2004 issued the Decision and Order-Awarding Benefits from which employer now appeals.

[2] In its brief employer does not separately challenge the administrative law judge's findings regarding each element of entitlement. *See* 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *see also Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986).

[3] We affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment determination and his findings that the x-ray evidence of record supported a finding of the existence of pneumoconiosis, that claimant was entitled to the presumption at Section 718.203(b) that his pneumoconiosis arose out of coal mine employment, and that claimant demonstrated the presence existence of a totally disabling

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 the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In this case, claimant's prior claim was denied because he failed to establish the existence of pneumoconiosis, the presence of a totally disabling respiratory impairment and that he was totally disabled due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986); Director's Exhibit 1. Section 725.309(d) provides that a subsequent claim must be denied, on the grounds of the prior denial of benefits, unless claimant is able to establish a change in one of the applicable conditions of entitlement since the prior denial. 20 C.F.R. §725.309(d). In addressing Section 725.309(d) (2000), the Fourth Circuit held that the administrative law judge must consider all of the new evidence, favorable and unfavorable, to determine whether claimant has proven at least one of the elements of entitlement previously adjudicated against him. *See Rutter*, 86 F.3d 1358, 20 BLR 2-227. If claimant proves one of those elements, he has demonstrated, as a matter of law, a material change in conditions and the administrative law judge must consider whether all of the evidence of record, including the evidence submitted with claimant's prior claim, supports a finding of entitlement to benefits. *Id*. In this case, the administrative law judge properly considered, in accordance with 20 C.F.R. §725.309(d) and the Fourth Circuit's holding in *Rutter*, whether the new evidence established that claimant has pneumoconiosis. Decision and Order at 4-12.

Review of the record in this case shows that claimant was a non-smoker who was employed as a coal-miner for forty-two years, forty-one of those underground. Hearing Transcript at 13-15.

Employer contends that, in finding that the newly submitted evidence established the existence of pneumoconiosis, the administrative law judge erred in not according dispositive weight to the opinions of Drs. Crisalli and Zaldivar. Employer contends that they are the most credible opinions as these physicians fully explained their conclusions and provided opinions which were supported by objective medical evidence. Employer further contends that the administrative law judge erred in according greater weight to the opinions of Drs. Rasmussen and Cohen, as they were not supported by objective evidence of claimant's condition, but were instead merely "based on literary supposition garnered from published articles which the doctors purport to support their opinions." Employer's

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respiratory impairment pursuant to Section 718.204(b)(i), (ii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Brief at 11. Thus, employer contends that the administrative law judge failed to provide a basis for crediting the conclusions of Drs. Rasmussen and Cohen that claimant's pulmonary fibrosis arose from coal mine employment.

Employer asserts that in reaching his diagnosis, Dr. Rasmussen merely cites two articles, both of which he participated in writing, and bases his opinion on the erroneous "syllogism that only coal mine dust exposure causes impairment in oxygen transfer without restrictive or ventilatory impairment, ergo, because the Claimant has such impairment, it therefore could only have been caused by his coal mine dust exposure." Employer's Brief at 12. Employer argues that many factors could cause such an impairment in oxygen transfer and that Dr. Rasmussen's articles provide no real support for his diagnosis. Employer's Brief at 12. Employer further argues that Dr. Rasmussen agreed with Drs. Zaldivar and Crisalli that claimant suffered from idiopathic pulmonary fibrosis, yet maintained claimant's pneumoconiosis was sufficient to cause claimant's abnormal physiological findings, specifically linear opacities in the lungs and oxygen transfer impairment absent ventilatory impairment. Lastly, with regard to Dr. Rasmussen, employer argues that the physician provided no support for his conclusion that idiopathic pulmonary fibrosis is an integral part of pneumoconiosis. Employer's Brief at 13.

With regard to Dr. Cohen's opinion, employer asserts that the physician's conclusion that claimant suffered from pneumoconiosis based on forty-two years of coal mine employment, symptoms and physical findings consistent with chronic lung disease and diagnostic evidence of pneumoconiosis including positive x-rays is not sufficient to support a finding of pneumoconiosis. Employer argues that, as was the case with Dr. Rasmussen, Dr. Cohen advanced the proposition that coal dust exposure causes idiopathic pulmonary fibrosis, a proposition unsupported by the study which Dr. Cohen purported to rely upon. Thus, employer reiterates that the conclusions of Drs. Cohen and Rasmussen are mere conjecture and unsupported by any objective evidence of claimant's condition.

Further, employer asserts that the opinion of Dr. Ranavaya, diagnosing claimant with pneumoconiosis arising out of coal mine exposure, is entitled to little weight as there is no explanation or reasoning provided for the opinion.

Additionally, employer contends that the administrative law judge improperly discredited the opinions of Drs. Zaldivar and Crisalli despite their superior credentials, as Board-certified internists and pulmonologists, compared to Dr. Rasmussen, who was not board-certified in pulmonary diseases. Employer acknowledges that Dr. Cohen is board-certified in pulmonary diseases and internal medicine, but notes that, in this case, he was a consulting, not an examining physician, as were Drs. Zaldivar and Crisalli.

Employer's assertions regarding the administrative law judge's analysis of the newly submitted medical evidence are tantamount to requests that the Board reweigh the evidence, a role outside of the Board's scope of review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). The record contains six newly submitted opinions relevant to the issue of the existence of pneumoconiosis pursuant to Section 718.202(a) (4). Drs. Zaldivar and Crisalli both opined that claimant did not demonstrate an obstructive or restrictive ventilatory impairment and that his impairment was the result of idiopathic pulmonary fibrosis, a disease of the general population unrelated to claimant's coal dust exposure. Employer's Exhibits 1, 2. Drs. Cohen and Rasmussen both opined that claimant suffered from coal workers' pneumonconiosis and that claimant's pulmonary fibrosis arose from coal mine dust exposure. Claimant's Exhibits 1, 2, 5. In addition, the record contains the newly submitted reports of Dr. Ranavaya, an examining physician, who opined that claimant suffered from pneumoconiosis based on claimant's coal mine employment history and x-ray evidence, Director's Exhibit 1, and Dr. Gaziano, who opined that claimant suffered from coal workers' pneumoconiosis based on examination and chest x-ray, Director's Exhibit 11.

In finding that the newly submitted evidence supported a finding of the existence of pneumoconiosis, the administrative law judge permissibly found that the newly submitted x-ray evidence supported a finding of the disease at Section 718.202(a)(1) as the weight of the nine new readings, Director's Exhibits 15-18; Employer's Exhibit 2; Claimant's Exhibits 1, 3, 4, by physicians with superior qualifications was positive for the existence of the disease. Decision and Order at 5; 20 C.F.R. §718.202(a)(1); *see Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992).[4]

In finding that the weight of the newly submitted medical opinions supported the existence of the disease pursuant to Section 718.202(a)(4), the administrative law judge rationally found the opinions of Drs. Cohen and Rasmussen entitled to greatest weight as they were the best supported and best reasoned of the newly submitted opinions. Decision and Order at 12; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996) (credibility of medical opinion is for administrative law judge to determine); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Clark v.*

[4] The administrative law judge correctly found that claimant was precluded from establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (3), as there was no autopsy or biopsy evidence and there was no evidence of complicated pneumoconiosis in this living miner's claim filed after January 1, 1982. 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306.

Karst-Robbins Coal Co., 12 BLR 1-149 (1989); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Contrary to employer's assertion that these opinions were not supported by objective evidence, the administrative law judge found that Dr. Cohen's conclusion was based on claimant's work history, symptoms, cardiopulmonary exercise studies showing abnormalities consistent with pneumoconiosis, positive x-ray readings and the lack of any other occupational exposure that causes coal workers' pneumoconiosis. Decision and Order at 9-10. Further, with regard to Dr. Rasmussen, an examining physician, the administrative law judge found, correctly, that the physician specifically based his finding of pneumoconiosis on x-ray evidence, the physical examination and the extensive history of coal mine dust exposure. The administrative law judge also found that Dr. Rasmussen stated that interstitial fibrosis was an integral part of pneumoconiosis.[5] Additionally, the administrative law judge permissibly found that the contrary opinions of Drs. Zaldivar and Crisalli were entitled to lesser weight as those physicians failed to explain how claimant's pulmonary impairment was in no way caused by or related to his forty-two years coal mine employment history, including forty-one years underground, and, further, the physicians did not take into account the broad concept of "legal pneumoconiosis" as defined at 20 C.F.R. §718.201(a)(2), in rendering their opinions. Decision and Order at 11-12; *see Hicks*, 138 F.3d 524, 21 BLR 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). Further, an administrative law judge may, in his or her discretion, assign more weight to a physician's report based on that physician's superior qualifications, but is not required to do so. *Gray v. SLC Coal Co.*, 176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999); *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(*en banc recon*); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-8 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR at 1-113, 1-114 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24, 1-26 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark*, 12 BLR 1-149 (1989)(*en banc*); *DeFore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1099). We thus reject employer's assertion that the opinions of Drs. Zaldivar and Crisalli were entitled to greater weight based on their superior credentials. In addition, we also reject employer's assertion that the opinions of Drs. Zaldivar and Crisalli were entitled to greater weight than Dr. Cohen's opinion based on the former physicians' status as examining physicians, because, as discussed above, the administrative law judge permissibly accorded lesser weight to the opinions of Drs. Zaldivar and Crisalli, as he found them not as well-

[5] Review of these opinions demonstrates that only Drs. Crisalli and Zaldivar diagnose the presence of **idiopathic** pulmonary fibrosis, *i.e.*, fibrosis arising from an unknown cause, while the other physicians diagnose the presence of pulmonary fibrosis; specifically Drs. Rasmussen and Cohen specifically attribute the disease to coal dust exposure. This is sufficient to satisfy the statutory definition of pneumoconiosis pursuant to 20 C.F.R. §718.201(a)(2).

reasoned as the opinions of Drs. Rasmussen and Cohen, *see Hicks*, 138 F.3d 524, 21 BLR 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *see also Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000) (administrative law judge may not discredit physician's opinion solely because physician did not examine claimant). Moreover, with regard to the opinion of Dr. Ranavaya, review of the administrative law judge's Decision and Order demonstrates that in determining that newly submitted opinion evidence supports a finding of pneumoconiosis, the administrative law judge only noted that the physician diagnosed the existence of pneumoconiosis and did not specifically rely upon the opinion as anything more than support for the opinions of Drs. Cohen and Rasmussen's that claimant suffered from pneumoconiosis. Decision and Order at 12.

Contrary to employer's assertion that the administrative law judge made no inquiry into whether Dr. Gaziano's opinion was reasoned, *see* Employer's Brief at 17, implicit in an administrative law judge's reliance on a particular physician's opinion is a finding that the opinion is reasoned, *see Pulliam v. Drummond Coal Co.*, 7 BLR 1-846 (1985); *see also Freeman United Coal Mining Co. v. Cooper*, 965 F.2d 443, 448, 16 BLR 2-74, 2-79 (7th Cir. 1992), and the determination of whether an opinion is reasoned is within the sound discretion of the administrative law judge, *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Accordingly, the administrative law judge's reliance on Dr. Gaziano's opinion as supportive of the opinions of Drs. Cohen and Rasmussen was proper. We, therefore affirm the administrative law judge's determination that the newly submitted medical opinion evidence establishes the existence of pneumoconiosis pursuant to Section 718.202(a)(4); the administrative law judge's determination that a weighing of the newly submitted evidence on the whole supports a finding of the existence of pneumoconiosis pursuant to Section 718.202(a), *see Compton*, 211 F.3d 203, 22 BLR 2-162; and the administrative law judge's determination that claimant established a material change in conditions pursuant to Section 725.309, *see Rutter*, 86 F.3d 1358, 20 BLR 2-227.

In considering the merits of entitlement, the administrative law judge determined that the weight of all the evidence of record supported a finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a). *See Compton*, 211 F.3d 203, 22 BLR 2-162. Employer makes no assertion of error regarding the administrative law judge's evaluation of all the evidence of record separate from its allegation of error regarding the administrative law judge's finding of pneumoconiosis based on the newly submitted evidence pursuant to Section 725.309. Accordingly, lacking a specific allegation of error concerning the administrative law judge's evaluation of the record as a whole, coupled with the administrative law judge's rational consideration of the new evidence, we affirm the administrative law judge's finding of the existence of pneumoconiosis on the merits. *See Cox v. Benefits Review Board*, 791 F. 2d 445, 9 BLR

2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1- 119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

Employer argues that the administrative law judge erred in relying upon the opinion of Dr. Gaziano, that claimant suffered from pneumoconiosis arising out of coal mine employment, that claimant suffered from a moderate impairment, and that claimant was unable to perform coal mine work, Director's Exhibit 11, as support for a finding of total disability pursuant to 20 C.F..R. §718.204(b). Employer argues that the physician's opinion is not a reasoned opinion of disability as the physician did not base his conclusion in terms of claimant's usual coal mine employment as a welder/electrician/mechanic.

We disagree with employer's assertion. In determining that claimant established a totally disabling respiratory impairment pursuant to Section 718.204(b), the administrative law judge found that the pulmonary function study evidence and blood gas study evidence was supportive of a finding of total disability pursuant to Section 718.204(b)(i) and (ii), and that all of the examining physicians including Dr. Gaziano found that claimant was totally disabled from coal mine employment. Decision and Order at 14. The administrative law judge determined that Dr. Gaziano's finding of a disabling moderate impairment was supportive of a finding of total disability based upon the fact that claimant's work as a miner required heavy manual labor. Decision and Order at 14. That was reasonable. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Wilburn v. Director, OWCP*, 11 BLR 1-135 (1988); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 and 13 BLR 1-46 (1986) *aff'd on recon.*, 9 BLR 1-104 (1986)(*en banc*); *Mazgaj v. Valley Camp Coal Corp.*, 9 BLR 1-201 (1986).

Employer also argues that the administrative law judge erred in finding that claimant established disability causation at 20 C.F.R. §718.204(c), *i.e.*, that pneumoconiosis was a substantially contributing cause of his totally disabling respiratory impairment. *See* 20 C.F.R. §718.204(c); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003); *see also Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). Employer contends that the opinion of Dr. Gaziano is not supportive of a finding of disability causation as the physician merely listed "N/A" when asked the extent to which claimant's pneumoconiosis contributed to his disability. Employer further argues that while Dr. Ranavaya specifically found that claimant suffered from pneumoconiosis arising out coal mine employment, the physician further opined that claimant had only a minimal impairment due to pneumoconiosis that would not prevent claimant from returning to coal mine employment. Thus, employer argues, the administrative law judge erred in concluding that Dr. Ranavaya's opinion supported a finding of total respiratory disability due to pneumoconiosis.

In finding that claimant established disability causation pursuant to Section 718.204(c), the administrative law judge accorded greatest weight to the opinions of Drs. Cohen and Rasmussen, "supported as they are by that of Dr. Gaziano," Decision and Order at 15. Review of Dr. Gaziano's opinion indicates, as previously discussed, that the physician diagnosed only coal workers' pneumoconiosis, arising out of coal mine employment and that claimant was totally disabled. When asked to state "[t]he extent to which each of the diagnoses listed…above contributes to the impairment", the physician wrote "N/A." Director's Exhibit 11. We hold that since Dr. Gaziano stated only one diagnosis, it was rational for the administrative law judge to conclude that the physician attributed claimant's totally disabling respiratory impairment to pneumoconiosis. *See* 20 C.F.R. §718.204(c); *Gross*, 23 BLR 1-8. We thus reject employer's assertion that the administrative law judge impermissibly relied upon the opinion of Dr. Gaziano for support of his finding on disability causation.

We also reject employer's assertion that the administrative law judge improperly relied upon the opinion of Dr. Ranavaya as support for a finding of disability causation. Review of Dr. Ranavaya's opinion along with the administrative law judge's Decision and Order demonstrates that the administrative law judge did not rely on Dr. Ranavaya's diagnosis of a minimal pulmonary impairment, Director's Exhibit 1, as support for a finding of disability causation, Decision and Order at 15. Moreover, the administrative law judge permissibly found the opinions of Drs. Zaldivar and Crisalli entitled to little weight on the issue of disability causation, as those physicians did not find that claimant suffered from pneumoconiosis and a totally disabling respiratory impairment, when the existence of such conditions had been established. *See Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-373 (4th Cir. 2002); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). Accordingly the administrative law judge's finding that claimant's totally disabling respiratory impairment was due to pneumoconiosis at Section 718.204(c) is affirmed. 20 C.F.R. §718.204(c); *Gross*, 23 BLR 1-8; *see Hobbs*, 917 F.2d 790, 15 BLR 2-225; *Robinson*, 914 F.2d 35, 14 BLR 2-68.

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge