BRB No. 97-1318 BLA

JACOB CLINE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Award of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

John W. Walters (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order - Award of Benefits (96-BLA-1520) of Administrative Law Judge Thomas F. Phalen, Jr., on a claim for medical benefits only 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 ordered employer to pay the disputed medical benefits. On appeal, employer asserts that the administrative law judge erred in his weighing and crediting of the medical opinion evidence. Claimant has not responded, and the Director, Office of Workers' Compensation Programs, has indicated that he will not file a brief 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.,* 380 U.S. 359 (1965).

The procedural history of this claim is as follows. Claimant filed an application for benefits on July 11, 1979. Director's Exhibit 1. The Social Security Administration deputy commissioner determined that claimant was entitled to benefits. Director's Exhibit 5. On April 24, 1980, the Department of Labor issued an Amended Award of Benefits. Director's Exhibit 6. On January 20, 1982, D.L. Rutter, employer's vice president of claims, signed an Agreement to Pay Medical Benefits. Director's Exhibit 8. On March 18, 1982, the district director issued an Award of Benefits, which stated that employer would pay reasonable and necessary medical expenses starting July 19, 1979. Director's Exhibit 9. Old Republic Insurance Company (Old Republic) indicated that it would not pay the bills submitted by claimant and his medical providers. Director's Exhibits 14, 16, 17, 19, 20. In a March 22, 1989 letter to Old Republic, the claims examiner requested that Old Republic pay the bills. Director's Exhibit 26. Claimant requested a hearing because of employer's refusal to pay his medical bills, Director's Exhibit 27, and the case was transferred to the Office of Administrative Law Judges, Director's Exhibit 29. By Order dated December 12, 1990, Judge Gilday remanded the case to the district director for "full compliance" with 20 C.F.R. §727.707.[1] On March 2, 1994, the district director issued a Proposed Decision and Order finding that employer must pay the disputed medical bills. Director's Exhibit 30. Employer requested a hearing, Director's Exhibit 30, and the case was transferred to the Office of Administrative Law Judges. Director's Exhibit 31.

In his Decision and Order - Award of Benefits, the administrative law judge noted the procedural history of the claim and reviewed the medical evidence contained in the record. The administrative law judge found that since entitlement had been established previously, "all evidence submitted in an attempt to show that the Claimant does not suffer from pneumoconiosis is not relevant in deciding whether the Claimant's medical treatment was reasonable and necessary for the treatment of pneumoconiosis." Decision and Order - Award of Benefits at 6. The administrative law judge discredited the opinions of Drs. Dahhan, Tuteur, Fino and

[1] The Director appealed Judge Gilday's December 12, 1990 Order to the Board. On October 28, 1992, the Board issued an Order dismissing the Director's appeal as interlocutory. *Cline v. Island Creek Coal Company,* BRB No. 91-0681 BLA (Oct. 28, 1992)(Order)(unpub.).

Spagnolo and accorded greatest weight to the opinion of Dr. Smith, claimant's treating physician. Decision and Order - Award of Benefits at 6-7.

On appeal, employer contends that the administrative law judge erred by failing to consider the qualifications of the physicians, particularly in view of the significant differences in their credentials. Employer contends that the administrative law judge erred by discrediting the opinions of Drs. Fino, Spagnolo and Tuteur. Employer notes that Drs. Fino and Tuteur agree that claimant's treatment was for asthma and employer contends, contrary to the administrative law judge's finding, that neither of these physicians based their conclusions regarding the compensability of claimant's medical treatment on the premise that pneumoconiosis is untreatable. Employer also asserts that the administrative law judge erred by discrediting the opinions of Drs. Dahhan and Fino based on his finding that these physicians did not believe that claimant had pneumoconiosis. Rather, employer asserts, these physicians opined that claimant was not being treated for pneumoconiosis.

In order to establish entitlement to medical benefits, claimant must establish that his medical expenses were necessary to treat his pneumoconiosis and ancillary pulmonary conditions and disability. *See* 33 U.S.C. §907(a); 20 C.F.R. §725.701(b). As the United States Court of Appeals for the Fourth Circuit has held, in demonstrating that medical expenses are necessary for the treatment of his pneumoconiosis, claimant is entitled to the rebuttable presumption that his pulmonary disorders are caused or aggravated by his pneumoconiosis, making employer liable for the medical costs. *See Doris Coal Co. v. Director, OWCP* [*Stiltner*], 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991), *aff'g in part and rev'g in part Stiltner v. Doris Coal Co.*, 14 BLR 1-116 (1990)(*en banc*, with Brown, J., dissenting and McGranery, J., concurring and dissenting). The Board has held that this presumption may be rebutted:

> by a reasoned medical opinion, [which establishes] either that: 1) the expenses in question were not reasonable for the treatment of any of claimant's pulmonary diseases (*i.e.,* a reasoned medical opinion which states that a certain type of treatment is excessive or simply not necessary for the treatment of claimant's pulmonary condition); or 2) the treatment is for a condition completely unrelated to claimant's pulmonary condition (*e.g.,* treatment for a heart condition, broken bone or bad back).

Seals v. Glen Coal Co., 19 BLR 1-80, 1-85, n.6 (1995), *aff'd on reconsideration en banc,* BRB No. 92-1887 BLA (June 18, 1996)(appeal pending in the United States Court of Appeals for the Sixth Circuit.).

Inasmuch as the administrative law judge did not consider the *Stiltner* presumption or the methods of establishing rebuttal of the *Stiltner* presumption, which were enunciated by the Board in *Seals*, we vacate the administrative law judge's award of medical benefits. On remand, the administrative law judge must consider this case pursuant to the applicable case law, and any decision issued by the Sixth Circuit in *Seals*.[2]

In addition, we reject employer's assertion that the administrative law judge erred by not considering the qualifications of the physicians whose opinions are contained in the record. The Board has consistently held that the administrative law judge may, but is not required to, rely upon a medical opinion based on the physician's superior credentials. *See Warman v. Pittsburg and Midway Coal Mining Co.*, 4 BLR 1-601 (1982), *aff'd*, 839 F.2d 257, 11 BLR 2-62 (6th Cir. 1988); *Wetzel v. Director, OWCP,* 8 BLR 1-139 (1985). Employer's other assertions in this appeal concern the administrative law judge's weighing of the medical opinions. Since we are remanding this case for consideration under the proper legal standard, we need not address these assertions. On remand, the administrative law judge must fully explain his credibility determinations and his weighing of the evidence.

[2] We note that the administrative law judge did not make a specific determination regarding which bills are at issue, or the total value of the bills he ordered employer to pay. On remand, the administrative law judge must specifically identify the bills in question and render a determination as to the total amount, if any, that he orders employer to pay.

Accordingly, the administrative law judge's Decision and Order - Award of Benefits is vacated and this case is remanded to the administrative law judge 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