

BRB No. 07-0512 BLA

S. B.)
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 Claimant-Respondent)
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 v.)
)
 CLINCHFIELD COAL COMPANY) DATE ISSUED: 03/25/2008
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 and)
)
 PITTSON COMPANY)
)
 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 Awarding Benefits of Alice M. Craft,
Administrative Law Judge, United States Department of Labor.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for
employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (04-BLA-6332) of
Administrative Law Judge Alice M. Craft on a claim¹ 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the

¹ The claim was filed on April 28, 2003. Director's Exhibit 2.

administrative law judge credited the parties' stipulation that claimant worked in qualifying coal mine employment for forty-two years. The administrative law judge found that both clinical and legal pneumoconiosis were established pursuant to 20 C.F.R. §718.202(a), that pneumoconiosis arose out of claimant's coal mine employment pursuant to 20 C.F.R. § 718.203(b), that total respiratory disability was established pursuant to 20 C.F.R. §718.204(b), and that pneumoconiosis was a substantially contributing cause of total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were awarded commencing August 1996, the month in which the administrative law judge found the first evidence of total disability.

On appeal, employer argues that the administrative law judge erred in her analysis of the medical opinion evidence and in finding the medical opinion evidence sufficient to establish total disability due to pneumoconiosis at Section 718.204(c). In addition, employer argues that the administrative law judge erred in awarding benefits from August 1996. Claimant has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.²

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.³ 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In finding that the medical opinion evidence established that claimant's totally disabling respiratory impairment was due to pneumoconiosis at Section 718.204(c), the administrative law judge credited the opinion of Dr. Paranthaman,⁴ who found that

² We affirm the administrative law judge's determinations with respect to length of coal mine employment, that claimant suffers from pneumoconiosis arising out of coal mine employment, and that claimant is totally disabled, as unchallenged on appeal. 20 C.F.R. §§718.202(a), 718.203(b), 718.204(b); *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983).

³ The record demonstrates that claimant's coal mine employment occurred in Virginia. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*); Director's Exhibit 4.

⁴ The administrative law judge noted that Dr. Paranthaman found that the following conditions, except lung cancer, contributed to 90% of claimant's disabling respiratory impairment 1) pulmonary emphysema due to the combined effects of cigarette smoking and coal dust exposure, 2) simple coal workers' pneumoconiosis, 3) status post

claimant's disability was due to the combined effects of coal mine dust exposure and cigarette smoking. The administrative law judge found that it was the best reasoned opinion of record and that it was most consistent with the premise underlying the regulations that coal mine dust exposure can cause a disabling obstructive respiratory impairment. The administrative law judge gave less weight to the opinions of Drs. Caffrey⁵ and Castle⁶ because they appeared to have addressed only the existence of clinical pneumoconiosis and attributed claimant's obstructive pulmonary condition to cigarette smoking alone, without addressing the effects of claimant's lengthy coal dust exposure or claimant's obstructive lung impairment. The administrative law judge found that this failure rendered their opinions incomplete and less than objective. Regarding the opinion of Dr. Fino,⁷ the administrative law judge accorded it less weight because the administrative law judge found that the doctor's attempt to calculate the amount of disability due to coal mine employment, as opposed to smoking, was unsupported by objective data.

Challenging the administrative law judge's weighing of the conflicting medical opinions of record at Section 718.204(c), employer argues that the administrative law judge erred in according Dr. Paranthaman's opinion greatest weight because it was the best reasoned. Employer contends that Dr. Paranthaman's opinion was not reasoned because he relied on a cigarette smoking history of only twenty years, when, in fact,

thoractomy and lobectomy for lung cancer, 4) bronchospasm, and 5) cor pulmonale due to coal workers' pneumoconiosis and emphysema. Director's Exhibit 12.

⁵ Employer has not challenged the administrative law judge's consideration of Dr. Caffrey's opinion. The administrative law judge's finding regarding Dr. Caffrey's opinion is, therefore, affirmed. *Coen*, 7 BLR at 1-33; *Skrack*, 6 BLR at 1-711. The administrative law judge noted that Dr. Caffrey found that claimant was disabled due to emphysema and the removal of part of his left lung due to cancer, which were due to smoking, not pneumoconiosis.

⁶ The administrative law judge noted that Dr. Castle opined that claimant was totally disabled as a result of his "tobacco smoke induced bullous emphysema as well as his resectional lung surgery for his lung cancer," and his general age, not as a result of coal workers' pneumoconiosis. Director's Exhibit 33; Employer's Exhibit 12.

⁷ The administrative law judge noted that Dr. Fino opined that claimant's disabling respiratory impairment was due to cigarette smoking, not pneumoconiosis. He opined that claimant would have been disabled had he never been in the mines. He further opined that while coal mine dust inhalation contributed to claimant's emphysema and obstruction, it did not do so in a clinically significant fashion. Employer's Exhibit 9.

claimant testified to, and the other physicians of record reported, a cigarette smoking history of thirty years.⁸ Employer also contends that Dr. Paranthaman's opinion was not reasoned because he failed to explain why the respiratory impairments he diagnosed were caused by coal mine employment and were disabling and he relied, in part, on diagnoses that were not supported by claimant's treatment records or other medical reports.⁹ We agree.

Claimant is not required to establish the relative degrees of causal contribution by pneumoconiosis and smoking to demonstrate that his total disability is due to pneumoconiosis. *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18 (2003). Claimant's history of cigarette smoking is, however, relevant to a determination of whether the evidence has established disability causation pursuant to Section 718.204(c). The administrative law judge must resolve any discrepancies in the evidence regarding claimant's smoking history before she can assess the credibility of the medical opinions. *See Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985). The administrative law judge must consider whether the physician has relied on accurate cigarette smoking and coal mine employment histories in order to have a complete picture of the miner's health and to render a probative opinion as to whether pneumoconiosis was a causative factor in the miner's disability. *See Gorzalka v. Big Horn Coal Co.*, 16 BLR 1-48, 1-52 (1990). Therefore, because, as employer contends, Dr. Paranthaman relied on a smoking history less than that found by the administrative law judge and the administrative law judge did not discuss this discrepancy, the administrative law judge erred in finding Dr. Paranthaman's disability causation opinion to be reasoned. *Bobick*, 13 BLR 1-54; *Maypray*, 7 BLR at 1-686. Further, the case must be remanded for reconsideration of Dr. Paranthaman's opinion, because, as employer contends, Dr. Paranthaman did not sufficiently explain why the respiratory impairments he diagnosed were disabling and his diagnoses of disabling hypertension and cor pulmonale were not supported in claimant's treatment records and were contradicted in other medical opinions. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Accordingly, we vacate the administrative law judge's finding that disability causation was established at Section 718.204(c) and we remand the case for further consideration of Dr. Paranthaman's opinion.

⁸ Claimant testified that he smoked for approximately thirty years. Hearing Transcript at 31-33. Dr. Castle and Dr. Fino reported a thirty year smoking history. Director's Exhibit 33.

⁹ Employer contends that Dr. Paranthaman's finding of cor pulmonale was not mentioned in claimant's treatment records and that Dr. Castle stated that there was no evidence of cor pulmonale.

Employer next asserts that the administrative law judge erred in discrediting the opinion of Dr. Castle on the ground that the doctor did not discuss the issue of legal pneumoconiosis. Employer avers that the administrative law judge erred because Dr. Castle's deposition testimony demonstrates that the doctor testified that claimant had a very significant and disabling respiratory impairment, which was not in any way related to coal workers' pneumoconiosis or coal dust exposure. Employer's Exhibit 12 at 25. Further, employer contends that the administrative law judge erred in finding that, because medical literature has found that dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms, the opinions of Drs. Castle and Fino were not entitled to any weight as they tried to determine whether claimant had a dust-induced impairment or a smoking-induced impairment. Employer additionally argues that the administrative law judge erred in rejecting Dr. Castle's opinion that claimant's disability was due to smoking on the ground that claimant stopped smoking cigarettes twelve years before he stopped working in the mines. Employer contends that such analysis is not rational or supported by the record as claimant was not diagnosed with lung cancer until 1996, eighteen years after he stopped smoking and the first evidence of a disabling respiratory impairment was not until August of 1996, when claimant was diagnosed with lung cancer. Employer's Brief at 5-8. Employer's arguments have merit.

During the deposition taken on October 11, 2004, Dr. Castle opined that claimant's severe disabling respiratory impairment was attributable to tobacco smoke-induced bullous emphysema and his previous lung resection surgery. Similarly, in his December 22, 2003 narrative report, Dr. Castle emphasized that his opinion that claimant's simple coal workers' pneumoconiosis did not contribute to claimant's total disability was not predicated upon the lack of radiographic findings of pneumoconiosis, but was instead based on the totality of the evidence, including his own examination of claimant, specifically claimant's employment and personal historical information, the valid physiologic studies, radiographic findings, and physical findings. Director's Exhibit 33.

The administrative law judge failed to properly analyze the entirety of Dr. Castle's opinion, which delineated the doctor's reasons for why he believed that claimant's simple coal workers' pneumoconiosis did not contribute to claimant's respiratory disability and why he believed that claimant's disabling obstructive respiratory impairment was due to smoking, not coal mine employment. We, therefore, vacate the administrative law judge's weighing of Dr. Castle's opinion and remand the case for further consideration. *See Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988); *Hopton v. U.S. Steel Corp.*, 7 BLR 1-12, 1-14 (1984); Decision and Order at 16.

Employer also contends that the administrative law judge erred in discrediting the opinion of Dr. Fino, who opined that claimant's disabling lung disease was due to cigarette smoking, and that coal dust exposure did not have a material adverse effect on

claimant's respiratory disability on the basis that Dr. Fino's opinion lacked objectivity. Employer contends, however, that Dr. Fino's opinion was based on his review of claimant's medical records. We must, therefore, remand the case for the administrative law judge to provide sufficient reasoning for her finding that Dr. Fino's opinion lacked objective support. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *see also Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); Decision and Order at 16.

Finally, employer contends that the administrative law judge erred in relying on claimant's qualifying pulmonary function study of August 1996 and Dr. Fino's statement that claimant was disabled based on that test, as the basis for her determination that benefits should commence from August 1996. Employer contends that the proper inquiry is not when claimant became disabled, but when he became disabled from clinical or legal pneumoconiosis.

In determining the date from which benefits commence, the administrative law judge must determine the date on which the miner became totally disabled *due to pneumoconiosis*, not just the date on which he became totally disabled. *Edmiston v. F & R Coal Co.*, 14 BLR 1-65, 1-69 (1990); *Carney v. Director, OWCP*, 11 BLR 1-32 (1987). In this case, since the administrative law judge relied solely on evidence showing that claimant was disabled, we must vacate the administrative law judge's finding and remand the case for reconsideration of that issue. On remand, if reached, the administrative law judge must determine whether medical evidence establishes when claimant became *totally disabled due to pneumoconiosis*. If medical evidence does not establish the date on which claimant became totally disabled due to pneumoconiosis, then claimant is entitled to benefits as of the date he filed his claim, unless credited medical evidence indicates that claimant was not totally disabled at some point subsequent to his filing date. *Edmiston*, 14 BLR at 1-69; *Gardner v. Consolidation Coal Co.*, 12 BLR 1-184 (1989); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989).

In light of the foregoing, we vacate the administrative law judge's finding that the medical opinion evidence established that claimant's pneumoconiosis substantially contributed to his total disability at Section 718.204(c). On remand, the administrative law judge must provide a more complete discussion of the medical opinions on the issue of disability causation. 20 C.F.R. §718.204(c); *see Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). Further, if reached, the administrative law judge must reconsider the evidence addressing when claimant became totally disabled due to pneumoconiosis to determine the date from which benefits commence. *Edmiston*, 14 BLR at 1-69.

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed in part, and vacated in part, and the case is remanded for consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge