

BRB No. 11-0630 BLA

JAMES R. ALSBROOKS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
PITTSBURG & MIDWAY COAL MINING)	
)	DATE ISSUED: 05/23/2012
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Brent Yonts, Greenville, Kentucky, for claimant.

John C. Morton and Keith A. Utley (Morton Law LLC), Henderson, Kentucky, for employer.

Barry H. Joyner (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (05-BLA-5862) of Administrative Law Judge Daniel F. Solomon awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30

U.S.C. §§921(c)(4) and 932(l) (the Act). This case, involving a claim filed on May 3, 2004, is before the Board for the second time.

In the initial decision, the administrative law judge credited claimant with twenty-nine years of coal mine employment,¹ and found that the x-ray evidence established the existence of clinical pneumoconiosis² pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge also found that claimant was entitled to the presumption that his clinical pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge further found that the evidence established total disability pursuant to 20 C.F.R. §718.204(b). Finally, the administrative law judge found that the evidence established that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

Pursuant to employer's appeal, the Board affirmed the administrative law judge's finding that the x-ray evidence established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *Alsbrooks v. Pittsburg & Midway Coal Mining Co.*, BRB No. 09-0782 BLA (Sept. 10, 2010) (unpub.). The Board also affirmed, as unchallenged on appeal, the administrative law judge's finding that the evidence established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv). *Id.* However, the Board vacated the administrative law judge's finding that the evidence established that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). *Id.* Because the administrative law judge appeared to have found that claimant's total disability was due to legal pneumoconiosis,³ the Board instructed the administrative law judge, on remand, to first determine whether the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *Id.* Further, the Board instructed

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

² "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

³ "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

the administrative law judge to reconsider the medical opinion evidence as to the cause of claimant's total disability, and to explain fully his analysis and findings. *Id.*

On remand, the administrative law judge found that the medical opinions of Drs. Simpao and Baker "constitute[ed] legal pneumoconiosis," pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order on Remand at 2. The administrative law judge further found that the medical opinions of Drs. Simpao and Baker established that claimant's total disability is due to his "coal mine employment" pursuant to 20 C.F.R. §718.204(c). *Id.* at 4. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis. Employer also argues that the administrative law judge erred in finding that claimant's total disability is due to pneumoconiosis. Claimant and the Director, Office of Workers' Compensation Programs, respond in support of the administrative law judge's award of benefits. In a reply brief, employer reiterates its previous contentions.⁴

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

In considering whether the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered the opinions of Drs. Simpao, Baker, and Selby. In addition to diagnosing clinical pneumoconiosis, Dr. Simpao opined that claimant suffers from "moderate restrictive and severe obstructive airways disease." Director's Exhibit 12. Dr. Simpao further opined that claimant's "multiple years of coal dust exposure [were] medically significant in his pulmonary impairment." *Id.* Dr. Baker diagnosed legal

⁴ Section 1556 of Public Law No. 111-148 amended the Act with respect to the entitlement criteria for certain claims. The recent amendments to the Act, which became effective on March 23, 2010, and which apply to claims filed after January 1, 2005, do not apply to this claim, because it was filed before January 1, 2005.

pneumoconiosis, in the form of severe obstructive airway disease “due to a probable combination of [claimant’s] coal dust exposure and cigarette smoking.” Claimant’s Exhibit 4. In contrast, Dr. Selby opined that claimant does not suffer from any lung condition caused by his coal mine dust exposure. Employer’s Exhibits 2, 3. Dr. Selby diagnosed asthma unrelated to coal mine dust inhalation, and chronic obstructive pulmonary disease due to cigarette smoking. Employer’s Exhibit 2 at 19, 32.

In evaluating the conflicting evidence, the administrative law judge found that the opinions of Drs. Simpao and Baker “constitute legal pneumoconiosis.” Decision and Order on Remand at 2. The administrative law judge next accorded less weight to Dr. Selby’s opinion, that claimant does not suffer from legal pneumoconiosis, because he found that the doctor failed to adequately explain how he eliminated claimant’s twenty-nine years of coal mine employment as a contributor to claimant’s disabling obstructive impairment. *Id.* at 3. The administrative law judge, therefore, found that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *Id.*

Employer argues that the administrative law judge erred in discounting Dr. Selby’s opinion. We disagree. The administrative law judge noted that Dr. Selby relied, in part, on the partial reversibility of claimant’s impairment after bronchodilator administration to exclude coal mine dust exposure as a cause of claimant’s obstructive impairment.⁵ Decision and Order at 16. The administrative law judge found, as was within his discretion, that Dr. Selby did not adequately explain why the irreversible portion of claimant’s pulmonary impairment⁶ was not due, in part, to coal mine dust exposure, or why claimant’s response to bronchodilators necessarily eliminated a finding of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2); *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 F. App’x 227, 237 (4th Cir. 2004); Decision and Order on Remand at 3. As the administrative law judge’s basis for discrediting Dr. Selby’s opinion is rational and supported by substantial evidence, it is affirmed.

⁵ Dr. Selby opined that the post-bronchodilator values from claimant’s 2005 pulmonary function study “show an obstructive lung disease that was highly reversible,” which “would be significant evidence against pneumoconiosis.” Employer’s Exhibit 2 at 10. Dr. Selby explained that the reversibility demonstrated by claimant’s pulmonary function study was a factor in his conclusion that claimant does not suffer from pneumoconiosis. *Id.* at 20.

⁶ The administrative law judge found that, although Dr. Selby’s 2005 pulmonary function study showed reversibility, the post-bronchodilator results “still demonstrated totally respiratory disability when compared to the table values set forth in 20 C.F.R Part 718, Appendix B.” Decision and Order on Remand at 3.

Employer also argues that the administrative law judge erred in his consideration of the opinions of Drs. Simpao and Baker. Employer specifically contends that the administrative law judge failed to consider whether the opinions of Drs. Simpao and Baker were sufficiently reasoned, asserting that these physicians “offer almost no analysis of any kind.” Employer’s Brief at 8. Whether a medical report is sufficiently reasoned is for the administrative law judge as the fact-finder to decide. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985). However, in relying upon the opinions of Drs. Simpao and Baker to support a finding of legal pneumoconiosis, the administrative law judge erred in not addressing the validity of the reasoning that the physicians provided for their opinions. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99 (6th Cir. 1983). Specifically, the administrative law judge did not address the reasons put forward by Drs. Simpao and Baker for attributing claimant’s obstructive pulmonary impairment to his coal mine dust exposure.

In light of the above-referenced error, we must vacate the administrative law judge’s finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and remand this case for further consideration. On remand, when considering whether the medical opinion evidence establishes the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge should address the explanations for the physicians’ conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

In light of our decision to vacate the administrative law judge’s finding of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), we also vacate his finding that the evidence established that claimant’s total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), and instruct him to reconsider this issue, if necessary, on remand. Specifically, if reached, the administrative law judge must determine whether clinical or legal pneumoconiosis is a “substantially contributing cause” of claimant’s total disability. 20 C.F.R. §718.204(c).

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further 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