BRB No. 00-0131 BLA

JACKIE W. CLENDENDON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	
	)	DATE ISSUED:
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 Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Martin E. Hall (Jackson & Kelly), Lexington, Kentucky, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order on Remand (96-BLA-1194) of Administrative Law Judge Stuart A. Levin awarding benefits on 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). This case has been before the Board previously.[1] On

[1]In *Clendendon v. Westmoreland Coal Co.*, BRB No. 98-0226 BLA (Nov. 3, 1998)(unpub.), the Board affirmed the administrative law judge's finding that claimant established total disability at 20 C.F.R. §718.204(c) as this finding was unchallenged on

remand, the administrative law judge reconsidered the medical opinions of record, and again credited the opinions of Drs. Paranthaman and Forehand as he found them to be credible, notwithstanding the contrary opinions in the record. The administrative law judge alternatively stated that if the Board rejects this finding, the medical evidence would require a rejection of the claim. Accordingly, benefits were awarded. On appeal, employer contends that the administrative law judge ignored the Board's directive on remand and has again failed to explain his findings in compliance with the Administrative Procedure Act. Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director) has indicated that he will not participate 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the arguments raised on appeal and the administrative law judge's Decision and Order on Remand, we agree with employer that the administrative law judge's decision does not comply with the Board's instructions on remand. After quoting portions of his previous decision in this case and listing the findings in Dr. Forehand's November 17, 1996 supplemental report, the administrative law judge, relying on *Gomola v. Manor Mining and Contracting Corp.*, 2 BLR 1-130 (1979), found that the opinions of Drs. Paranthaman and Forehand are reasoned and documented, and thus, were "credible notwithstanding the contrary opinions in the record." Decision and Order at 6. However, as we stated in our previous decision, the administrative law judge's finding that the opinions of Drs. Forehand and Paranthaman are reasoned and documented does not explain why he has accorded these opinions determinative weight over the contrary medical opinions of record which are similarly supported by objective data, medical, social and work histories. The case at bar arises within the jurisdiction of the United States Court of Appeals for the Fourth

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appeal. The Board vacated the administrative law judge's findings at 20 C.F.R. §§718.202(a)(4) and 718.204(b) as the administrative law judge failed to explain why he accorded determinative weight to the opinions of Drs. Paranthaman and Forehand. The Board therefore remanded the case for the administrative law judge to reconsider the medical opinions of record.

Circuit which has declared that an administrative law judge must adequately explain, with valid reasons, his decision to credit one doctor's opinion over that of another. *Milburn Collier Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323-336 (4th Cir. 1998). We therefore again vacate the administrative law judge's findings pursuant to Section 718.202(a)(4) and 718.204(b), and remand the case to the administrative law judge to fully explain his findings in accordance with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), which requires that every adjudicatory decision be accompanied by a statement of findings of fact and conclusions of law and the basis therefor on all material issues of fact, law or discretion presented in the record. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Moreover, we cannot affirm the administrative law judge's alternative finding in this case. The administrative law judge's statement:

> In the event, the Board, contrary to Gamola (*sic*), should again reject the opinion of Drs. Paranthaman and Forehand as substantial evidence supporting the award of benefits, and rely instead on Drs. Fino, Morgan, Tuteur, Castle, and Dahhan, the medical evidence would then obviously require the rejection of this claim.

Decision and Order at 6, also fails to comport with the Administrative Procedure Act.

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is vacated and the case is remanded to the administrative law judge for further consideration of the medical opinion evidence consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting

Administrative Appeals Judge