BRB No. 99-1237 BLA

HOWARD H. COPLEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BUFFALO MINING 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 John C. Holmes, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle and Rundle, L.C.), Pineville, West Virginia, for claimant.

Douglas A. Smoot and Kathy L. Snyder (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (95-BLA-0825) of Administrative Law Judge John C. Holmes denying benefits on a duplicate claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and

[1]Claimant's initial claim was filed on July 7, 1973. Director's Exhibit 33. This claim was denied by the Department of Labor on April 8, 1980. *Id.* Because claimant did not pursue this claim any further, the denial became final. Claimant's most recent claim was filed on March 30, 1994. Director's Exhibit 1.

Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). This case is before the Board for the third time. In the original Decision and Order, the administrative law judge credited claimant with twenty-seven years of coal mine employment and adjudicated this duplicate claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (a)(4) and 718.203(b). The administrative law judge also found the evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c). Additionally, the administrative law judge found the evidence sufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge awarded benefits to commence as of March 1, 1994. In response to employer's appeal, the Board affirmed the administrative law judge's finding at 20 C.F.R. §718.204(c). However, the Board vacated the administrative law judge's findings at 20 C.F.R. §§718.202(a)(1), (a)(4) and 718.204(b), and remanded the case for further consideration. *Copley v. Buffalo Mining Co.*, BRB No. 96-0706 BLA (Sept. 27, 1996)(unpub.).

On the first remand, the administrative law judge found the evidence sufficient to establish a material change in conditions at 20 C.F.R. §725.309. Further, although the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3), he found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a)(4) and 718.203(b). In addition, the administrative law judge found the evidence sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). Accordingly, the administrative law judge again awarded benefits to commence as of March 1, 1994. In disposing of employer's second appeal, the Board affirmed the administrative law judge's findings at 20 C.F.R. §§718.202(a)(1), (a)(4), 718.203(b) and 718.204(b). The Board also affirmed the administrative law judge's finding that March 1, 1994 was the onset date of total disability. *Copley v. Buffalo Mining Co.*, BRB No. 97-0789 BLA (Feb. 17, 1998)(unpub.). Employer appealed the Board's decision to the United States Court of Appeals for the Fourth Circuit, which vacated the administrative law judge's findings at 20 C.F.R. §§718.202(a)(4) and 718.204(b), and remanded the case to the administrative law judge to reweigh the evidence. *Buffalo Mining Co. v. Copley*, No. 98-1508 (4th Cir. Dec. 17, 1998).

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[2]The administrative law judge observed that "[t]he initial claim was denied on multiple grounds, including the [c]laimant's failure to establish total disability." [1997] Decision and Order on Remand at 2 n.1. The administrative law judge stated, "[s]ince the [c]laimant has established that element, a material change of condition has clearly been established." *Id.*

On the most recent remand, the administrative law judge found that, in effect, the Fourth Circuit's decision constituted a reversal of his prior findings at 20 C.F.R. §§718.202(a)(4) and 718.204(b). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge mischaracterized the Fourth Circuit's decision. Employer responds, urging affirmance of the administrative law judge's Decision and Order on Remand. The Director, Office of Workers' Compensation Programs, has declined to 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends that the administrative law judge, as fact-finder, erred in failing to follow the Fourth Circuit's instructions of reweighing the evidence and providing an explanation for his findings. 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), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). In his decision, the administrative law judge stated that "[t]he Court's succinct and accurate summarization and rejection of some key bases for my conclusion leave no alternative than to reverse my former holding." [1999] Decision and Order on Remand at 2. The administrative law judge also stated, "I find reasonable and do not disagree with the Court's analysis and the resultant 'findings of facts' that they would make were they permitted to do so, *i.e.* that [c]laimant had not proven the existence of pneumoconiosis based on a non-critical 'pure' weighing of the total medical evidence without regard to which party introduced it." *Id.* at 3. Further, the administrative law judge stated, "I interpret

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[3]The administrative law judge stated, "if I read the Court correctly, they are admonishing that the ALJ is limited in his or her role in weighing evidence, and may not look beyond the medical evidence presented in order [to] attempt to bridge this gap, even though the result may be a grossly uneven adjudication of entitlement to benefits in individual cases based on the capabilities or lack thereof of the parties to marshall [*sic*] evidence, and even though the ALJ must put aside his own expertise and knowledge (in the author's case garnered over 25 years of hearing and deciding 'black lung' cases)." [1999] Decision and Order on Remand at 3. The administrative law judge observed that "[o]n reconsideration, while my analysis of

the Court's finding that there is no substantial evidence to support a finding of pneumoconiosis to mean just that; *i.e.* that the medical evidence of record as now constituted would not support a finding of pneumoconiosis no matter who analyzed the medical evidence." *Id.* at 2. Hence, the administrative law judge stated that "the Court's decision is tantamount to a reversal." *Id.*

However, as previously noted, the Fourth Circuit vacated the administrative law judge's findings that the evidence is sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) and that the evidence is sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b), and remanded the case to the administrative law judge to reweigh the evidence. The Fourth Circuit stated, "[w]e agree with employer, however, that on remand the ALJ should discuss the tension between his finding that the x-ray evidence was insufficient to establish pneumoconiosis and his decision to rely on the reports of Drs. Ranavaya and Rasmussen, who partly based their findings of pneumoconiosis on positive x-ray evidence." *Buffalo Mining Co. v. Copley*, No. 98-1508, slip op. at 4 (4th Cir. Dec. 17, 1998). Here, the administrative law judge did not independently evaluate the relevant evidence. *See Wojtowicz, supra.* Since the administrative law judge did not follow the Fourth Circuit's specific instructions of reweighing the evidence and providing an explanation for his findings on remand, we vacate the administrative law judge's decision denying benefits and again remand the case to the administrative law judge to consider this claim on the merits by independently evaluating all of the relevant evidence of record. *See Hall v. Director, OWCP*, 12 BLR 1-80 (1988).

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the evidence presented was logical, reasonable and comprehensive, in several instances it may have gone beyond merely a weighing of the medical reports and reached medical conclusions that should have been put forward by a physician(s)." *Id.*

[4]The administrative law judge stated that "no doubt is left as to the only acceptable conclusion which can be reached on the issue of pneumoconiosis that will be acceptable to the Court in this case's present posture." [1999] Decision and Order on Remand at 2.

[5]The Fourth Circuit stated that "[b]ecause the ALJ's finding of pneumoconiosis is not supported by substantial evidence, we must vacate the decision of the Board and remand with instructions to further remand the case to the ALJ for reweighing of the evidence." *Buffalo Mining Co. v. Copley*, No. 98-1508, slip op. at 3 (4th Cir. Dec. 17, 1998). The Fourth Circuit also stated that "[b]ecause the ALJ's finding that the miner's disabling impairment was attributable to coal mine employment was based on precisely the same reasoning underlying his finding of pneumoconiosis, that finding is also vacated and should be reconsidered on remand as well." *Id.* at 3-4.

Subsequent to the issuance of the administrative law judge's decision, the Fourth Circuit held that an administrative law judge must weigh all types of relevant evidence together at 20 C.F.R. §718.202(a)(1)-(4) to determine whether claimant has established the existence of pneumoconiosis. *See Island Creek Coal Co. v. Compton*, 211 F.3d 303, BLR (4th Cir. 2000); *see also Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). Consequently, if the administrative law judge finds the evidence sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) on remand, he must weigh all types of relevant evidence together at 20 C.F.R. §718.202(a)(1)-(4) to determine whether claimant has established the existence of pneumoconiosis. *See Compton, supra*. If the administrative law judge finds the evidence sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) in accordance with *Compton*, he must consider whether the evidence is sufficient to establish that claimant's pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(b). Finally, the administrative law judge must consider whether the evidence is sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b), if reached. *See Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is vacated and the case is remanded for further proceedings 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