

BRB No. 05-0535 BLA

ROBERT PRICE)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 11/22/2005
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order on Remand-Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand-Denying Benefits (97-BLA-0862) of Administrative Law Judge Joseph E. Kane rendered on a 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 is before the Board for the fourth time. The full procedural history of this claim was summarized in our prior decision. *Price v. Coal Power Corp.*, BRB No. 03-0344 BLA (Mar. 29, 2004)(unpub.).

In *Price*, the Board vacated the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(4) that the medical opinion evidence uniformly supported a finding that claimant suffers from legal pneumoconiosis as defined at 20 C.F.R. §718.201. *Price*, slip op. at 5. The Board noted that Drs. Powell, Jarboe, Broudy, and Kraman did not

diagnose pneumoconiosis, and instructed the administrative law judge to weigh their opinions against those of Drs. Baker and Myers diagnosing claimant with chronic obstructive pulmonary disease due in part to coal dust exposure. *Price*, slip op. at 5 n.6. Additionally, the Board vacated the administrative law judge's finding that claimant's pneumoconiosis did not arise out of coal mine employment pursuant to 20 C.F.R. §718.203(b), because the administrative law judge's credibility determinations were inadequately explained. *Price*, slip op. at 6-7. Accordingly, the Board remanded the case to the administrative law judge for further consideration.¹

On remand, the administrative law judge again found that "the narrative medical evidence is uniform in its conclusion that Claimant suffers from legal pneumoconiosis." Decision and Order at 11. Turning to Section 718.203(b), however, the administrative law judge found that a preponderance of the evidence did not establish that claimant's pneumoconiosis arose out of coal mine employment. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical evidence when he concluded that claimant does not have pneumoconiosis arising out of coal mine employment. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand, arguing that the administrative law judge did not weigh the conflicting medical opinions regarding the existence of pneumoconiosis at Section 718.202(a)(4). The Director alleges further that the administrative law judge's findings at Section 718.203(b) can not be affirmed because they are inadequately explained.

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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson*

¹ The Board affirmed the dismissal of Coal Power Corporation as the responsible operator. *Price v. Coal Power Corp.*, BRB No. 03-0344 BLA, slip op. at 4 n.5 (Mar. 29, 2004)(unpub.). The Director, Office of Workers' Compensation Programs is now the respondent in this claim.

v. Valley Camp of Utah, Inc., 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to Section 718.202(a)(4), the administrative law judge found that the medical opinion evidence uniformly diagnosed legal pneumoconiosis. As the Director argues, this finding is erroneous. Contrary to the administrative law judge's finding, and as we noted previously, Drs. Powell, Jarboe, Broudy, and Kraman did not diagnose a "chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b); *Price*, slip op. at 5 n. 6; Director's Exhibits 35, 40, 44, 51, 54, 59. We must therefore vacate the administrative law judge's finding pursuant to Section 718.202(a)(4), and remand this case for him to weigh the conflicting medical opinions to determine whether claimant has established, by a preponderance of the evidence, the existence of pneumoconiosis as it is defined under Section 718.201. See *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

Further, the administrative law judge is required to make a determination of causation under Section 718.203, applying the rebuttable presumption, as appropriate. In remanding the case, we note the Director's concession that if claimant establishes the existence of legal pneumoconiosis, "then he necessarily has proven his pneumoconiosis arose out of coal mine employment" under Section 718.203. Motion to Remand at 3. n.1.

While noting the Director's concession, we address the administrative law judge's findings concerning the medical opinions at Section 718.203(b) in order to avoid any repetition of error when the administrative law judge on remand weighs the medical opinions under Section 718.202(a)(4). We agree with the Director that the administrative law judge did not adequately explain why he credited the opinions of Drs. Powell and Jarboe over those of Drs. Baker and Myers. As the Director notes, the administrative law judge both credited and discredited the disease etiology opinions of Drs. Powell and Jarboe, leaving unclear the weight he actually accorded these opinions. Decision and Order at 10, 12, 13-14. Additionally, the administrative law judge found that Dr. Baker possessed the same credentials in internal medicine and pulmonary disease as Drs. Powell and Jarboe, but later found, without explanation, that Drs. Powell and Jarboe were "better-qualified." Decision and Order at 12, 14. Further, although the administrative law judge found Dr. Myers's opinion well

documented and reasoned, Decision and Order at 13, he did not indicate the weight accorded Dr. Myers's opinion. Decision and Order at 13-14. Finally, the administrative law judge found that claimant's "coal dust exposure was limited," Decision and Order at 14, but did not cite to record evidence supporting this finding, and a review of the record discloses contrary evidence. Director's Exhibit 53 at 6; Hearing Tr. at 8, 16, 21, 23. Therefore, on remand the administrative law judge should discuss all relevant evidence and explain his findings regarding the conflicting medical opinions on the etiology of claimant's respiratory or pulmonary impairment. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

In addition, if the administrative law judge finds the existence of pneumoconiosis established pursuant to Section 718.202(a)(4), and determines that the pneumoconiosis arose out of coal mine employment pursuant to Section 718.203, he must determine whether the evidence establishes that claimant is totally disabled due to pneumoconiosis pursuant to Section 718.204(c).

Accordingly, the administrative law judge's Decision and Order on Remand-Denying Benefits is vacated and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge