BRB Nos. 00-0112 BLA and
00-0112 BLA/A

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| THOMAS LEE BROWN | ) | |
| Claimant-Petitioner | ) | |
| | ) | DATE ISSUED: |
| v. | ) | |
| NEW HORIZONS COAL, INCORPORATED | ) | |
| and | ) | |
| GREAT WESTERN RESOURCES | ) | |
| Employer/Carrier-<br>Cross-Petitioners | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | DECISION and ORDER |
| Party-in-Interest | | |

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

Edmond Collett, Hyden, Kentucky, for claimant.

Denise M. Davidson (Barret, Haynes, May, Carter & Roark, P.S.C.), Hazard, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals and employer cross-appeals the Decision and Order--Denying Benefits (98-BLA-1358) 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). The administrative law judge accepted the parties' stipulation to sixteen years of coal mine employment and found that the medical opinion evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b), but concluded that the medical evidence did not establish that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his weighing of the medical evidence pursuant to Section 718.204(c)(4). Employer has not filed a response brief to claimant's appeal, but has filed a cross-appeal challenging the administrative law judge's finding that the existence of pneumoconiosis was established pursuant to Section 718.202(a)(4). The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.

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

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 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 718.204(c)(4), claimant challenges the administrative law judge's finding that the medical opinion evidence did not establish that claimant is totally disabled. Specifically, claimant contends that the administrative law judge did not consider whether a mild respiratory impairment precluded claimant from performing his usual job duties as a supply man. This contention has merit.

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[1] We affirm as unchallenged on appeal the administrative law judge's finding regarding length of coal mine employment, his finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(3), and his finding that total disability was not established pursuant to 20 C.F.R. §718.204(c)(1)-(3). *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

A miner is considered totally disabled when "pneumoconiosis . . . prevents or prevented the miner . . . [f]rom performing his or her usual coal mine work." 20 C.F.R. §718.204(b)(1). An administrative law judge considering the medical opinions pursuant to Section 718.204(c)(4) may infer total disability by comparing a physician's assessment of respiratory limitations with the physical requirements of claimant's usual coal mine employment. *See Cross Mountain Coal, Inc. v. Ward*, 93 F.3d 211, 218-19, 20 BLR 2-360, 2-374 (6th Cir.1996); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, *aff'd on recon.*, 9 BLR 1-104 (1986)(*en banc*). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, recently reiterated the principle that "even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties, depending on the exertional requirements of the miner's usual coal mine employment." *Cornett v. Benham Coal Co*., 2000 WL 1262464, *8 (6th Cir., Sept. 7, 2000).

The record indicates that claimant's work as a supply man required him to load and unload from a "battery motor" 500 blocks, 1500 roof bolts and plates, 50 bags of rock dust, 92 boxes of glue, 20 cans of oil, and 3 cases of grease each day. Director's Exhibit 3. When timbering was being done, claimant loaded and unloaded 700 timbers daily. *Id*. Claimant indicated that every other day he loaded and unloaded belts and parts of the beltline structure. *Id*.

Claimant was examined by three physicians to determine whether he was totally disabled due to pneumoconiosis. Dr. Glen Baker examined claimant on April 13, 1994 and again on June 6, 1997. During both examinations, Dr. Baker evaluated a chest x-ray, pulmonary function study, blood gas study, and claimant's medical and work histories. Director's Exhibits 13, 27. Based on the chest x-ray, the presence of a "mild obstructive ventilatory defect" on pulmonary function testing, and claimant's coal dust exposure history, Dr. Baker diagnosed coal workers' pneumoconiosis, bronchitis, and chronic obstructive airway disease due to coal dust exposure. *Id*. In both of his reports, Dr. Baker indicated that claimant had a mild pulmonary impairment as a result of these diagnosed conditions. In his 1994 report, Dr. Baker stated that claimant was totally disabled by the mild impairment, because he would have difficulty doing sustained manual labor. However, in his 1997 report, Dr. Baker unexplainedly checked a box indicating that claimant had the respiratory capacity "to perform the work of a coal miner . . . ." Director's Exhibit 13.

Dr. William Anderson examined and tested claimant on June 13, 1994. Director's Exhibit 27. Dr. Anderson diagnosed "Category 1/1 pneumoconiosis." *Id*. Based on a pulmonary function study, Dr. Anderson reported a "[m]ild decrease in pulmonary function," reflecting a "10-25% impairment," which Dr. Anderson attributed to the effects of a back injury. *Id*. Dr. Anderson stated that claimant retained the respiratory capacity to perform his usual coal mine employment. Dr.

Bruce Broudy examined and tested claimant twice, once on May 17, 1995 and again on August 5, 1997. Director's Exhibit 21. Dr. Broudy diagnosed claimant with back pain, obesity, and dyspnea but believed that he did not have pneumoconiosis. Dr. Broudy described claimant's pulmonary function study as "borderline" between normal and abnormal and his blood gas study as showing a very slight resting arterial hypoxemia. Dr. Broudy stated that these results could be attributed to back pain, obesity, or submaximal effort, and concluded that claimant retained the respiratory capacity to perform his usual coal mine employment. Director's Exhibit 31.

The administrative law judge gave "little weight" to Dr. Baker's 1994 opinion that claimant was totally disabled because the administrative law judge found it unsupported by objective testing. Decision and Order at 10. The administrative law judge stated that Dr. Baker's 1994 pulmonary function study yielded higher percentage of predicted values than did his 1997 pulmonary function study, when Dr. Baker concluded that claimant was not totally disabled. The administrative law judge gave "significant weight" to Dr. Broudy's reports, because he found that they "comport[ed] with the objective medical evidence." *Id*. Accordingly, the administrative law judge found that claimant failed to establish total disability pursuant to Section 718.204(c)(4).

As claimant contends, the administrative law judge did not fully analyze the medical evidence relevant to total disability. Regardless of whether Dr. Baker's 1994 pulmonary function study yielded higher percentage values than in 1997, Dr. Baker assessed a mild respiratory impairment based on pulmonary function testing both times. The exertional requirements of claimant's usual coal mine duties are documented in the record. The administrative law judge did not consider whether the mild impairment prevents claimant from performing those duties. *See Cornett, supra*; *Budash, supra*. Therefore, we must vacate the administrative law judge's finding pursuant to Section 718.204(c)(4) and remand the case for him to reconsider the medical opinions consistently with *Cornett*. In assessing whether the mild impairment is disabling, the administrative law judge should weigh Dr. Baker's opinion that the impairment is respiratory in origin against Dr. Anderson's and Broudy's view that claimant's impairment is nonpulmonary. *See Beatty v. Danri Corporation and Triangle Enterprises*, 16 BLR 1-11, 1-15 (1991), *aff'd* 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995).

Because we have vacated the administrative law judge's denial of benefits and will remand this case for further consideration, we now address employer's cross-appeal challenging the administrative law judge's finding that the existence of pneumoconiosis was established.

The administrative law judge found that the x-ray readings did not support a finding of the existence of pneumoconiosis pursuant to Section 718.202(a)(1), but that the medical opinions established the existence of pneumoconiosis pursuant to Section 718.202(a)(4). As noted above, Drs. Baker and Anderson diagnosed pneumoconiosis and Dr. Broudy concluded that pneumoconiosis was absent. The administrative law judge noted that all three are Board-certified in Internal Medicine and Pulmonary Disease, and found that "their reports appear to be well-reasoned. On balance, . . . the evidence establishes the existence of simple pneumoconiosis." Decision and Order at 9. Employer contends that the administrative law judge erred in finding the reports of Drs. Baker and Anderson well-reasoned when, employer asserts, their opinions are nothing more than restatements of an x-ray reading.

A medical opinion which is merely a restatement of an x-ray reading is not a reasoned medical judgment pursuant to Section 718.202(a)(4). *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993). However, employer's argument that Dr. Baker's reports are merely restatements of an x-ray reading lacks merit. It is clear from Dr. Baker's reports that he based his diagnosis of coal workers' pneumoconiosis, bronchitis, and chronic obstructive airways disease due to coal dust exposure on an examination, chest x-ray, pulmonary function study indicating mild obstruction, claimant's coal mine employment history, and his history as a non-smoker. Director's Exhibits 13, 27. Therefore, the administrative law judge did not err in finding Dr. Baker's opinion to be a reasoned medical judgment. Dr. Anderson's report, however, is more open to question in this regard. Dr. Anderson diagnosed only "Category 1/1 pneumoconiosis." Director's Exhibit 27. He did not rely on the pulmonary function study he administered because he indicated that claimant's mild reduction in pulmonary function was unrelated to coal dust exposure. It is not clear to what extent Dr. Anderson based his diagnosis of "Category 1/1 pneumoconiosis" on the examination, histories, or other medical studies conducted. More detailed findings as to whether Dr. Anderson's report is a documented and reasoned medical judgment are required. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir.1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993). Therefore, we vacate the administrative law judge's finding pursuant to Section 718.202(a)(4) and instruct him to assess the reasoning of Dr. Anderson's opinion, and then determine whether the weight of the medical opinion evidence establishes the existence of pneumoconiosis.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge