BRB No. 99-1246 BLA

JAMES W. COLE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
COLE & WHITE, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order-Approving Reimbursement of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Lawrence L. Moise, III (Robert Austin Vinyard), Abingdon, Virginia, for claimant.

W. William Prochot (Arter & Hadden, LLP), Washington, D.C., for employer.

Michelle S. Gerdano (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order on Remand-Approving Reimbursement Benefits (98-BTD-3) of Administrative Law Judge Edward Terhune Miller on a claim for medical benefits 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).[1] The administrative law judge determined that this medical benefits case was governed by the holding of the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, in *Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991). Decision and Order at 10. The administrative law judge found that the evidence of record established that claimant was entitled to the presumption established by *Doris Coal*, and that employer was unable to produce evidence sufficient to establish rebuttal of that presumption. Accordingly, the administrative law ordered reimbursement of medical expenses totaling $2060.44.[2]

---

[1] Part B recipients who file Part C claims subsequent to March 1, 1978 are limited to medical benefits only under the Black Lung Benefits Reform Act. 20 C.F.R. §725.701A; *see* 30 U.S.C. §924a; *Kosh v. Director, OWCP*, 8 BLR 1-168, 1-171 (1985), *aff'd* 791 F.2d 918 (3d Cir. 1986)(table); *see* Director's Exhibit 1. In a Decision and Order dated December 26, 1979, Administrative Law Judge Roy P. Smith awarded benefits to claimant and expressly directed employer to pay claimant all medical and hospitalization benefits to which he was entitled commencing as of November 1, 1975. Director's Exhibit 1. Employer did not appeal this award of benefits and claimant proceeded to collect benefits. Beginning in 1995, employer refused to pay medical bills submitted by claimant seeking reimbursement for medical expenses incurred. Upon review, the district director determined that the contested services rendered were compensable and directed employer to pay the medical bills relating to these services. Director's Exhibits 4, 10. Employer continued to object to the payment of these bills. Director's Exhibits 11, 13, 19. Eventually, the matter was forwarded to the Office of Administrative Appeals Judges for a hearing. Director's Exhibit 21. On August 10, 1999, the Administrative Law Judge Edward Terhune Miller issued the Decision and Order on Remand-Approving Reimbursement Benefits from which employer now appeals.

[2] Specifically, the administrative law judge found that the expenses were:

> a $52.00 charge for a February 2, 1998, office visit involving a follow up examination expressly related to pneumoconiosis and pulmonary symptoms; three charges of $51.50, $26.00, and $52.00 for an office visit and examination; charges of $192.80, [$]74.50, [$]648.70, and [$]87.50, related to a hospital admission November 3-18, 1997, for acute exacerbation of underlying pulmonary disease with evidence of cor pulmonale

and volume overload (DX 13, 15), and charges of $187.20, $506.45, $96.82, and $84.97, on July 15, 16, 23, and 25, 1996, respectively, related to a hospital admission for treatment of a pneumonia superimposed on his occupational pulmonary disease.

Decision and Order at 3.

On appeal, employer contends that the administrative law judge misapplied the holdings in *Doris Coal* and the subsequent cases of *Gulf & Western Industries v. Ling*, 176 F.3d 226, 21 BLR 2-570 (4th Cir. 1999) and *General Trucking Corp. v. Salyers*, 175 F.3d 322, 21 BLR 2-565 (4th Cir. 1999). Employer asserts that it presented credible evidence that the disputed medical services and treatment were for smoking-related problems, not pneumoconiosis. Employer further contends that the administrative law judge's analysis of the medical opinion evidence of record violates the requirements of the Administrative Procedure Act (the APA), 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), inasmuch as the administrative law judge failed to provide any rational basis for according greater weight to Dr. Robinette's opinion than to Dr. Fino's opinion. Both claimant and the Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, respond, urging affirmance of the administrative law judge's Decision and Order.

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).

In *Doris Coal* the Fourth Circuit held that by demonstrating that his medical expenses were necessary for the treatment of his pneumoconiosis, claimant established entitlement to the rebuttable presumption that his pulmonary disorders were caused or aggravated by his pneumoconiosis. *See Doris Coal*, 938 F.2d 492, 15 BLR 2-140. Once a claimant affirmatively establishes entitlement to this presumption, employer may establish rebuttal of the presumption by producing credible evidence that the treatment is for a pulmonary disorder apart from one previously associated with claimant's disability, or is beyond that necessary to treat the disorder, or is not necessary to treat a pulmonary disorder at all. *See Doris Coal*, *supra*; *see also Ling*, *supra*; *Salyers*, *supra*.

Initially, we reject employer's assertion that the administrative law judge applied an incorrect standard of analysis in reviewing claimant's medical bills. Contrary to employer's assertion, the holdings of the Fourth Circuit in *Ling*, *supra*, and *Salyers*, *supra*, do not overrule or alter the standard enunciated by the Fourth Circuit in *Doris Coal*. Rather, they clarify the holding, specifically reiterating that the *Doris Coal* presumption may not be applied to shift the burden of proof from claimant to employer. *See Ling*, *supra*; *Salyers*, *supra*; *see generally Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

In the instant case, the administrative law judge concluded that the medical opinions

of claimant's treating physician, Dr. Robinette, and the associated medical bills, established invocation of the presumption enunciated by the Fourth Circuit court in *Doris Coal*. *See* Director's Exhibits 2, 3, 15; Claimant's Exhibit 1. The administrative law judge found that Dr. Robinette had treated claimant for four years and opined that the treatments and hospitalizations during this time period were a result of claimant's pneumoconiosis. Thus, the administrative law judge concluded that Dr. Robinette's opinions were entitled to great weight based on his status as claimant's treating physician and the fact the Dr. Robinette provided "objectively based, detailed, and carefully and specifically reasoned" medical opinions. Decision and Order at 12.

The administrative law judge proceeded to conclude that the opinions of Dr. Fino, who found that claimant's treatments and hospitalizations during the same time period were for diseases of the general populace, and were insufficient, therefore, to establish rebuttal of the *Doris Coal* presumption. *See* Employer's Exhibits 1, 3. Although the administrative law judge acknowledged that Dr. Fino's credentials were equal to those of Dr. Robinette, he found that because Dr. Robinette was claimant's treating physician his opinion was entitled to greater weight. The administrative law judge further concluded that Dr. Fino's opinion was further entitled to less weight than Dr. Robinette's opinion inasmuch as Dr. Fino failed to acknowledge the medical treatment claimant was receiving, *i.e.*, bronchodilators, which, under the Act, are compensable as "palliative measures useful only to prevent pain or discomfort associated with the miner's pneumoconiosis." 20 C.F.R. §725.701(c).

Contrary to employer's assertion, the administrative law judge has provided an affirmable basis for crediting the medical opinions of Dr. Robinette over those of Dr. Fino, *i.e.*, Dr. Robinette's status as claimant's treating physician. *See Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *see generally Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). Further, contrary to employer's assertion, the administrative law judge properly accorded greater weight to Dr. Robinette's conclusions inasmuch as the administrative law judge, in a permissible exercise of his discretion, concluded that Dr. Robinette's opinions were the best reasoned and documented of record. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).[3] Ultimately, employer's allegations regarding the administrative law judge's analysis of the opinions of Drs. Robinette and Fino are tantamount to a request for the Board to reweigh the evidence of

[3] Inasmuch as the administrative law judge has provided proper reasons for according greater weight to the opinions of Dr. Robinette over those by Dr. Fino, we need not address employer's other allegations of error regarding these opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

record, which is outside the Board's scope of review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). We conclude, therefore, that the administrative law judge's analysis of the evidence comports with the standard enunciated in *Doris Coal* and its progeny and we hold that the administrative law judge properly ordered reimbursement of medical benefits. *See Doris Coal*, *supra*; *Ling*, *supra*; *Salyers*, *supra*.

Accordingly, the administrative law judge's Decision and Order-Approving Reimbursement is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge