

BRB No. 03-0231 BLA

ANDREW COLLETT)	
)	
Claimant)	
)	
v.)	DATE ISSUED: 10/20/2003
)	
DEBRA LYNN COALS, INCORPORATED)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

W. William Prochot (Greenberg Traurig LLP), Washington D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (1999-BLA-1348) of Administrative Law Judge Rudolf L. Jansen awarding benefits 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).¹ This case is before the Board for a third time.² Based on the date of filing,

¹The Department of Labor (DOL) has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

²Claimant filed a claim for benefits on December 14, 1998. Director's Exhibit 1. In a

the administrative law judge adjudicated this claim pursuant to 20 C.F.R Part 718. In a Decision and Order issued on November, 2002, the administrative law judge found the evidence of record sufficient to establish that claimant's totally disabling respiratory impairment was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).³ Accordingly, benefits were awarded.

On appeal, employer challenges the findings of the administrative law judge that the medical opinion evidence is sufficient to establish the existence of totally disabling pneumoconiosis arising out of coal mine employment. Claimant has not responded to the instant appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating 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 administrative law judge's Decision and Order on Remand,

Decision and Order issued on May 18, 2000, Administrative Law Judge Donald W. Mosser found that claimant established the existence of totally disabling coal workers' pneumoconiosis arising out of coal mine employment. Accordingly, benefits were awarded. On appeal, the Board affirmed Judge Mosser's findings of twelve years of coal mine employment, the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203 (2000), the existence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(c) (2000), and his finding that Dr. Baker's causation opinion was documented and reasoned pursuant to 20 C.F.R. §718.204(b) (2000), but vacated Judge Mosser's finding that the weight of the evidence established disability causation, and remanded this case for a reassessment and weighing of Dr. Dahhan's opinion. *Collett v. Debra Lynn Coals, Inc.*, BRB No. 00-0935 BLA (June 19, 2001)(unpub.). In response to employer's subsequent motion, the Board issued a Decision and Order on Reconsideration rejecting employer's challenge to the administrative law judge's findings pursuant to Section 718.202(a), and reaffirmed its previous Decision and Order. *Collett v. Debra Lynn Coals, Inc.*, BRB No. 00-0935 BLA (Jan. 30, 2002). On remand, the instant case was reassigned to Administrative Law Judge Jansen (the administrative law judge).

³The provisions pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), are now found at 20 C.F.R. §718.204(c).

the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order on Remand of the administrative law judge is supported by substantial evidence and contains no reversible error. Pursuant to Section 718.204(c), employer argues that the administrative law judge erred in failing to evaluate whether Dr. Baker's opinion was reasoned and documented before finding it sufficient to establish disability causation. Employer asserts that Dr. Baker's opinion is unsupported, unexplained, unreliable and insufficient to establish disability causation under the proper standard. Employers arguments are without merit. The Board previously held that Dr. Baker's opinion, if properly credited, could support a finding that pneumoconiosis was a substantially contributing cause of claimant's total disability, and that it was rational to credit this opinion as well reasoned and documented. *Collett v. Debra Lynn Coals, Inc.*, BRB No. 00-0935 BLA (Jun. 19, 2001)(unpub.); see Director's Exhibit 11; *Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001); *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Cross Mountain Coal Inc. v. Ward*, 93 F.3d 211, 20 BLR 2-360 (6th Cir. 1996); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989). On remand, after incorporating the prior findings of fact and conclusions of law except to the extent that they were found to be erroneous by the Board, the administrative law judge accurately reviewed the documentation which formed the basis for the conflicting medical opinions, and acted within his discretion in crediting Dr. Baker's opinion, stating that both coal dust exposure and smoking caused claimant's disability, as he found that it was well documented and better reasoned than the contrary opinion of Dr. Dahhan, that claimant's disability was due to smoking. Decision and Order on Remand at 2-4; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985). While employer correctly maintains that Dr. Baker's diagnosis of complicated pneumoconiosis in addition to simple pneumoconiosis was contrary to the prior finding that only simple pneumoconiosis was established, the physician's mistaken diagnosis does not automatically render his opinion on causation unreliable, since the determination of whether a medical report is reasoned is within the administrative law judge's purview.⁴ *Trumbo*, 17 BLR 1-85; *Fields*, 10 BLR 1-19.

We further reject employer's contentions that the administrative law judge imposed the burden on employer to prove that coal dust was not a factor in claimant's disability and erred in his consideration of Dr. Dahhan's opinion, diagnosing the presence of coal workers' pneumoconiosis but finding that claimant's total disability was due solely to smoking.

⁴In addition to clinical pneumoconiosis, Dr. Baker diagnosed chronic bronchitis and chronic obstructive pulmonary disease due to coal dust exposure and smoking, and opined that all three conditions contributed fully to claimant's disability. Director's Exhibit 11.

Director's Exhibit 20. The administrative law judge permissibly accorded less weight to the opinion, as he found that Dr. Dahhan failed to account for claimant's significant dust exposure in his coal mine employment or the effects of claimant's cessation of smoking.⁵ Decision and Order on Remand at 4; Director's Exhibit 20; *Trumbo*, 17 BLR 1-85; *Clark*, 12 BLR 1-149; *Fields*, 10 BLR 1-19. Moreover, we find no merit in employer's assertion that the administrative law judge essentially discounted Dr. Dahhan's opinion as hostile to the Act by additionally concluding that Dr. Dahhan attempted to "avoid directly addressing the question as to whether the miner's disability was related to his coal mine employment," as this observation was an appropriate exercise of the administrative law judge's discretion to draw inferences and make credibility determinations. Decision and Order on Remand at 4; see *Wolf Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511, 22 BLR 2-494 (6th Cir. 2002); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). As we find no error in the administrative law judge's findings at Section 718.204(c), they are affirmed as supported by substantial evidence. *Ward*, 93 F.3d 211, 20 BLR 2-360; *Adams*, 886 F.2d 818, 13 BLR 2-52.

Employer also asserts its previously raised contentions that the prior administrative law judge erred in finding that claimant established the existence of pneumoconiosis at Section 718.202(a) (2000), and total disability pursuant to Section 718.204(c) (2000). The Board's previous disposition of these issues constitutes the law of the case, and we decline to revisit the issues since there is no persuasive evidence that the law of the case doctrine is inapplicable, or that an exception has been demonstrated. See *Coleman v. Ramey Coal Co.*, 18 BLR 1-9 (1993); *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984). Consequently, we affirm the award of benefits.

⁵The administrative law judge determined that Dr. Dahhan concluded that lack of coal dust exposure in the two year period immediately prior to his examination of claimant would result in cessation of any industrial bronchitis, but that ADr. Dahhan makes no similar mention of the fact that Claimant stopped smoking four years before the examination." Decision and Order on Remand at 4; Director's Exhibit 20.

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge