BRB No. 06-0977 BLA

C.J.C.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 09/28/2007
	)	
SHREWSBURY COAL COMPANY	)	
	)	
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 on Remand Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Renae Reed Patrick (Washington & Lee University School of Law, Legal Clinic), Lexington, Virginia, for claimant.

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

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

PER CURIAM:

Employer appeals the Decision and Order on Remand Awarding Benefits (01-BLA-0877) of Administrative Law Judge Richard A. Morgan (the administrative law judge) 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 third time.[1]

In its prior Decision and Order, the Board vacated the administrative law judge's denial of benefits and remanded the case for the administrative law judge to reconsider the relevant medical opinion evidence pursuant to 20 C.F.R. §718.204(c). [*C.J.C.*] *v. Shrewsbury Coal Co.*, BRB No. 04-0920 BLA (Sept. 21, 2005)(Smith, J., dissenting) (unpub.). In vacating the administrative law judge's denial of benefits, the Board held that the administrative law judge erred in according little weight to the opinions of Drs. Rasmussen, Ward, and Koenig, who concluded that claimant's pneumoconiosis was a contributing cause of his totally disabling respiratory impairment, because they failed to sufficiently discuss the effects of asthma on claimant's respiratory disability. The Board held that these physicians are not required to "rule out" the effects of other causes of disability or establish that pneumoconiosis is the sole, or exclusive, cause of claimant's total disability in order to establish that pneumoconiosis is a substantially contributing cause of total disability. [*C.J.C.*], BRB No. 04-0920 BLA, slip op. at 3. Further, the Board held that if on remand the administrative law judge found one or more of these opinions credible, then he must weigh these opinions with the contrary opinions of Drs. Fino, Zaldivar, Crisalli, Hippensteel and Branscomb. The Board instructed the administrative law judge that in addressing the contrary medical opinions on remand, he must first consider them in light of the holdings of the United States Court of Appeals for the Fourth Circuit in *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002) and *Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995).

On remand, the administrative law judge noted the Board's mandate and weighed the relevant evidence under Section 718.204(c). The administrative law judge found the opinions of Drs. Koenig, Ward and Rasmussen, that claimant is totally disabled due to pneumoconiosis, to be reasoned and credited them as supporting a finding of disability causation. With regard to the medical opinions in which Drs. Fino, Crisalli, Zaldivar, Hippensteel, and Branscomb stated that claimant does not have pneumoconiosis, the administrative law judge found that the opinions were entitled to no weight under *Toler* and *Scott*. Upon considering all of the physician opinions together, the administrative law judge concluded that claimant had met his burden of proving that coal workers' pneumoconiosis caused his totally disabling respiratory impairment pursuant to Section 718.204(c). Accordingly, the administrative law judge awarded benefits.

[1] The procedural history of this case is set forth in the Board's prior decisions in [*C.J.C.*] *v. Shrewsbury Coal Co.*, BRB No. 03-0419 BLA (Feb. 25, 2004)(unpub.) and [*C.J.C.*] *v. Shrewsbury Coal Co.*, BRB No. 04-0920 BLA (Sept. 21, 2005)(Smith, J., dissenting) (unpub.).

On appeal, employer contends that the administrative law judge erred in finding that the opinions of Drs. Koenig, Ward and Rasmussen were sufficient to establish disability causation under Section 718.204(c). Employer also contends that the administrative law judge erred in declining to credit the opinions of Drs. Fino, Crisalli, Zaldivar, Hippensteel and Branscomb, arguing that the administrative law judge applied the wrong standard in finding that these opinions were entitled to no weight pursuant to Section 718.204(c). In response, claimant urges affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not respond 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 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After considering the administrative law judge's Decision and Order, the issues raised on appeal and the evidence of record, we hold that the Decision and Order of the administrative law judge is rational, supported by substantial evidence, and in accordance with law. Initially, we reject employer's contention that the administrative law judge's change in his assessments of the medical opinion evidence, specifically the crediting of the opinions of Drs. Koenig, Ward and Rasmussen and discrediting of the contrary evidence, is irrational because the administrative law judge did not reconcile his current findings with the findings from his prior decision. Employer's Brief at 7-12, 21-26. Contrary to employer's contention, the administrative law judge was not required to reconcile these findings, as the Board determined that the administrative law judge's prior findings were not based upon a proper application of the relevant law. Accordingly, the Board vacated these findings, thereby making them null and void. The administrative law judge properly conducted a *de novo* review of the medical opinion evidence of record, therefore, and rendered new findings in accordance with the Board's instructions.

Employer further contends that the administrative law judge erred in finding that the medical opinions of Drs. Rasmussen, Ward and Koenig are credible on the issue of disability causation. Employer also argues that the administrative law judge applied the wrong standard under Section 718.204(c). Employer's Brief at 13-19. Employer further maintains that the administrative law judge erred in discrediting the contrary medical opinions of Drs. Fino, Zaldivar, Crisalli, Hippensteel and Branscomb, contending that the administrative law judge misapplied the standard enunciated in *Toler* and *Scott*. Employer's Brief at 27-32. We disagree.

Pursuant to the Board's remand instructions,[2] the administrative law judge considered the medical opinions of Drs. Rasmussen, Ward and Koenig, that claimant's coal workers' pneumoconiosis was a causal factor in his total disability, finding that these opinions are sufficiently reasoned to establish disability causation pursuant to Section 718.204(c). Noting that claimant is not required to disprove or "rule out" other possible causes of claimant's total disability, the administrative law judge rationally found that while Dr. Rasmussen included a diagnosis of asthma in his assessment of claimant's condition, but did not state whether it contributed to claimant's total disability, the physician reasonably concluded that claimant's total disability was due to cigarette smoking and coal mine dust exposure. Consequently, the administrative law judge reasonably credited Dr. Rasmussen's opinion, that claimant's total disability was due to multiple causes, with claimant's coal dust exposure being a significant and major contributor. 2006 Decision and Order on Remand at 4; Director's Exhibit 6; *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003).

The administrative law judge also acted within his discretion in crediting Dr. Ward's opinion, that claimant's prolonged coal dust exposure substantially and materially contributed to his severe respiratory impairment, under Section 718.204(c). 2006 Decision and Order on Remand at 4; Claimant's Exhibits 8, 10. In this regard, the administrative law judge properly noted that a physician is not required to specifically apportion the extent to which various causal factors contribute to a totally disabling respiratory or pulmonary impairment in order to provide a credible opinion regarding disability causation. *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622, 23 BLR 2-345, 372 (4th Cir. 2006); *Gross*, 23 BLR at 1-18-19. Similarly, the administrative law judge rationally found Dr. Koenig's opinion sufficiently reasoned on the issue of disability causation, based on his statements that even if claimant has asthma, claimant's chronic obstructive pulmonary disease (COPD), which was caused by smoking and coal dust exposure, is a significant contributing cause of claimant's total disability and that coal mine employment was the more important cause of claimant's COPD. Decision and Order on Remand at 4; Claimant's Exhibit 11; Employer's Exhibit 20. Consequently, because Dr. Koenig was not required to establish that pneumoconiosis is the sole cause of

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[2] The Board noted that, pursuant to Section 718.204(c):

> [C]laimant is required to show only that pneumoconiosis is a substantially contributing cause of total disability and pneumoconiosis is a "substantially contributing" cause, if it has a material adverse effect on the miner's respiratory or pulmonary condition or if it materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

[*C.J.C.*], BRB No. 04-0920 BLA, slip op. at 3; 20 C.F.R. §718.204(c)(1)(i), (ii).

the miner's total disability, the administrative law judge acted within his discretion in finding this opinion reasoned at Section 718.204(c). *Id*.; *Williams*, 453 F.3d at 622, 23 BLR at 2-372; *Gross*, 23 BLR at 1-18-19.

With regard to the administrative law judge's application of the holdings in *Toler* and *Scott* to the contrary medical opinions of record, we reject employer's contention that the administrative law judge should have applied the decisions in which the Fourth Circuit has held that an administrative law judge may credit a physician's causation opinion even if it is predicated on a finding, contrary to the administrative law judge's determination, that the miner does not suffer from pneumoconiosis. In *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995) and *Hobbs v. Clinchfield Coal Co. [Hobbs II]*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995), the Fourth Circuit held that physicians' opinions, that claimant does not have clinical pneumoconiosis, do not necessarily contradict an administrative law judge's finding that claimant has legal pneumoconiosis. In *Scott* and *Toler*, however, the Fourth Circuit held that opinions in which a physician finds, contrary to an administrative law judge's determination, that the miner has neither legal nor clinical pneumoconiosis, cannot be credited unless the administrative law judge identifies "specific and persuasive reasons for concluding that the doctor's judgment" on causation "does not rest upon her disagreement with the [administrative law judge's] finding . . . ." *Scott*, 289 F.3d at 269, 22 BLR at 2-384, quoting *Toler*, 43 F.3d at 116, 19 BLR at 2-83.

In the present case, the administrative law judge did not err in failing to credit the contrary medical opinions under *Mays*, *Hobbs II* and *Ballard*, as Drs. Fino, Zaldivar, Crisalli, Hippensteel, and Branscomb not only ruled out the existence of pneumoconiosis, they also stated that claimant does not suffer from any respiratory symptoms that could be related to claimant's coal dust exposure. Employer's Exhibits 2, 4-6, 9, 11, 18-19. We affirm, therefore, the administrative law judge's decision to give these opinions no weight under Section 718.204(c) in accordance with the Fourth Circuit's holdings in *Scott* and *Toler*. *Scott*, 289 F.3d at 269, 22 BLR at 2-384; *Toler*, 43 F.3d at 116, 19 BLR at 2-83.

We also reject employer's contention that *Scott* does not have precedential value because the administrative law judge's finding of pneumoconiosis in that case was based on the invalidated "true doubt" rule. Employer's Brief at 31-32. Contrary to employer's argument, the Fourth Circuit's holding in *Scott* did not rest upon the method by which the existence of pneumoconiosis was established. Rather, the crucial point is that the administrative law judge had rendered a finding that pneumoconiosis was established and then erroneously credited the causation opinions of physicians who contradicted that finding. *Scott*, 289 F.3d at 269, 22 BLR at 2-384. Thus, employer's argument that *Scott* no longer has precedential value is without merit.

Because the administrative law judge complied with the Board's instructions on remand and weighed all the relevant medical opinion evidence pursuant to the applicable standards, we affirm his finding that claimant established that pneumoconiosis was a substantially contributing cause of his disabling respiratory impairment pursuant to Section 718.204(c), as it is rational and supported by substantial evidence. *See* 20 C.F.R. §718.204(c); *Williams*, 453 F.3d at 622, 23 BLR at 2-372; *Gross*, 23 BLR at 1-18-19.

Finally, employer has requested that this case be held in abeyance pending the Fourth Circuit's disposition of appeals in *Elm Grove Coal Co. v. Director, OWCP* [*Blake*], No. 05-1108 (4th Cir. filed Jan. 27, 2005) and *Morgan v. Elkay Mining Co.*, No. 05-1516 (4th Cir. filed May 9, 2005). Because we find no compelling reason to delay our disposition of employer's appeal, we deny employer's request.[3]

[3] The Fourth Circuit has published a decision in *Elm Grove Coal Co. v. Director, OWCP* [*Blake*], 480 F.3d 278, 23 BLR 2-430 (4th Cir. 2007), in which it did not reach the issue of whether the administrative law judge properly weighed the physicians' opinions regarding the cause of the miner's totally disabling respiratory impairment.

Accordingly, the administrative law judge's Decision and Order on Remand Awarding Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge