

BRB No. 07-0174 BLA

J.H.)
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 Claimant-Respondent)
)
 v.)
)
 LESLIE RESOURCES) DATE ISSUED: 09/26/2007
)
 and)
)
 SECURITY INSURANCE OF HARTFORD,)
 INCORPORATED)
)
 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

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

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville,
Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and
HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision on Remand-Granting Benefits (2004-BLA-5491)
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 a second
time.

When this case was first before the administrative law judge, the administrative law judge credited claimant with twenty-one years of coal mine employment and found that the x-ray evidence of record established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge further found that while the medical evidence established a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), the evidence was insufficient to establish that claimant's total respiratory disability was due to pneumoconiosis (disability causation) pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

Pursuant to an appeal by claimant, the Board held that the administrative law judge erred in failing to consider the opinion of Dr. Simpao, that claimant's moderate pulmonary impairment was due to coal dust exposure, as that opinion was relevant to disability causation at Section 718.204(c). The Board affirmed the administrative law judge's finding insofar as he accorded "little weight" to Dr. Baker's opinion, that claimant was totally disabled due to pneumoconiosis, because Dr. Baker relied on an inaccurate smoking history. Decision and Order at 4. The Board vacated the administrative law judge's Section 718.204(c) findings and remanded the case for consideration of Dr. Simpao's medical opinion. *Hensley v. Leslie Resources*, BRB No. 05-0729 BLA (Mar. 31, 2006)(unpub.).¹

On remand, the administrative law judge found that the opinion of Dr. Simpao was unreasoned because the doctor failed to discuss the bases of his opinion and cited to no objective testing which would support his opinion. The administrative law judge, therefore, found it could not establish disability causation at Section 718.204(c). Regarding Dr. Baker's opinion, the administrative law judge acknowledged that it was entitled to little weight because it was based on an inaccurate smoking history but, nonetheless, found that, inasmuch as there were no other well-reasoned and well-documented opinions to outweigh it, it was sufficient to establish disability causation at Section 718.204(c). Benefits were, accordingly, awarded.

On appeal, employer contends that the administrative law judge erred in finding that claimant established disability causation pursuant to Section 718.204(c). Employer contends that the administrative law judge exceeded the scope of the Board's remand instructions when he addressed Dr. Baker's opinion and found that it established disability causation at Section 718.204(c). Employer argues that the administrative law judge erred in reconsidering Dr. Baker's opinion inasmuch as the Board had previously

¹ The Board observed that Dr. Baker relied on a smoking history that claimant quit smoking fifteen years prior to Dr. Baker's (2003) examination, whereas the administrative law judge found that claimant quit smoking in 2001. *Hensley v. Leslie Resources*, BRB No. 05-0729 BLA (2006)(unpub.).

affirmed the administrative law judge's accordance of little weight to Dr. Baker's opinion because the doctor relied on an inaccurate smoking history. Employer also contends that the administrative law judge erred in failing to give any weight to the opinions of Drs. Broudy and Dahhan, who opined that claimant was not totally disabled due to pneumoconiosis. Neither claimant, nor the Director, Office of Workers' Compensation Programs, has filed a brief on 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.² 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).

We agree with employer that the administrative law judge properly found that Dr. Simpao's opinion on disability causation was unreasoned as the doctor failed to provide a basis for his opinion. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-624 (6th Cir. 2003); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). The administrative law judge's finding that Dr. Simpao's opinion was unreasoned and could not establish disability causation at Section 718.204(c) is, therefore, affirmed.

We disagree with employer, however, that the administrative law judge was precluded from reconsidering the opinion of Dr. Baker on remand. The administrative law judge did not previously reject Dr. Baker's opinion outright. Rather, he accorded it little weight. Because the Board vacated the administrative law judge's finding on disability causation at Section 718.204(c), the administrative law judge could reconsider evidence relevant to that section. *See Dale v. Wilder Coal Co.*, 8 BLR 1-119 (1985).

In crediting the opinion of Dr. Baker, however, the administrative law judge failed to explain the bases on which he found it to be a reasoned opinion, *see Clark*, 12 BLR at 1-155. The administrative law judge's finding that Dr. Baker's opinion establishes disability causation at Section 718.204(c) is, therefore, vacated and the case is remanded for reconsideration of the opinion at Section 718.204(c). *See 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). Further, as employer asserts, the administrative law judge should also reassess the credibility of the opinions of Drs. Broudy and Dahhan at Section 718.204(c). In weighing these opinions, the administrative law judge should consider their opinions on

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 5.

disability causation in light of the administrative law judge's finding that the existence of clinical pneumoconiosis was established at Section 718.202(a)(1). *See Webber v. Peabody Coal Co.*, 23 BLR 1-123 (2006)(*en banc*)(J. Boggs, concurring), *aff'd on recon. en banc*, BLR (2007); *Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon. en banc*, BLR (2007); *see also Toler v. Eastern Assoc. Coal Co.*, 43 BLR 109, 19 BLR 2-70 (4th Cir. 1995).

Accordingly, the administrative law judge's Decision on Remand-Granting Benefits is affirmed in part, vacated in part, and the 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

BETTY JEAN HALL
Administrative Appeals Judge