BRB No. 11-0118 BLA

JESSIE BOWMAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED: 09/27/2011
MAVERICK COAL COMPANY	)	
	)	
and	)	
	)	
EMPLOYERS INSURANCE OF WAUSAU	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for employer.

Jonathan Rolfe (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; 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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (09-BLA-5570) of Administrative Law Judge Linda S. Chapman rendered on a claim filed pursuant to the

provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). This case involves a claim filed on July 18, 2008. Director's Exhibit 2. The administrative law judge credited claimant with "approximately 11.94 years" of coal mine employment,[1] and found that the preponderance of the medical evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. The administrative law judge, therefore, found that claimant was entitled to the irrebuttable presumption of total disability due to pneumoconiosis set forth at 20 C.F.R. §718.304.[2] Further, the administrative law judge found that claimant's complicated pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in considering certain x-ray and CT scan readings, which employer argues were submitted by claimant in excess of the evidentiary limitations. Employer further asserts that the administrative law judge erred in finding that the x-ray and medical opinion evidence established the existence of complicated pneumoconiosis pursuant to Section 718.304(a), (c).[3] Claimant did not file a response brief. The Director, Office of Workers'

[1] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as claimant was last employed in the coal mining industry in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 3.

[2] The administrative law judge also found that claimant established the existence of simple pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1),(4), and that he is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), but failed to prove that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Decision and Order at 23, 27-33.

[3] The administrative law judge's findings of approximately 11.94 years of coal mine employment, and that claimant's complicated pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), are unchallenged. Thus, these findings are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Because claimant did not establish at least fifteen years of coal mine employment, the administrative law judge correctly found that a recent amendment to the Act, which reinstated a rebuttable presumption of total disability due to pneumoconiosis, did not affect this case. *See* Pub. L. No. 111-148, §1556(a), 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4); Decision and Order at 34 n.30.

Compensation Programs (the Director), responds in support of the administrative law judge's award of benefits pursuant to Section 718.304.

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). The Board reviews the administrative law judge's procedural rulings for abuse of discretion. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(*en banc*).

Admission of Evidence

In considering the evidence, the administrative law judge discussed and weighed Dr. Rosenberg's medical report, submitted by claimant.[4] Employer argues that the administrative law judge should not have considered Dr. Rosenberg's report in full, because it contained inadmissible readings of five x-rays and a CT scan. Specifically, employer contends that the administrative law judge erred in admitting Dr. Rosenberg's reading of the October 21, 2008 x-ray, the physician's reading of four other x-rays dated September 27, 2002; March 13, 2003; October 16, 2006; April 23, 2008; and his reading of a CT scan dated October 17, 2006. We disagree.

The administrative law judge did not abuse his discretion in admitting Dr. Rosenberg's reading of the October 21, 2008 x-ray. The administrative law judge reasonably found that, because claimant was permitted two x-ray readings in support of his affirmative case, and had designated only one, Dr. Rosenberg's reading of the October 21, 2008 x-ray fell within claimant's evidentiary limitation for affirmative x-ray readings. 20 C.F.R. §725.414(a)(2)(i); Decision and Order at 22 n.15; Claimant's Revised Evidence Summary Form at 2.

Additionally, the other x-ray readings, all of which the administrative law judge found to be digital x-rays, and the CT scan reading, do not exceed the evidentiary limitations, as claimant was entitled to submit, in his affirmative case, one reading of each digital x-ray and CT scan under 20 C.F.R. §718.107.[5] *Webber v. Peabody Coal Co.*,

[4] Dr. Rosenberg examined claimant, and reviewed additional medical evidence, at employer's request. After Dr. Rosenberg diagnosed claimant with Category B large opacities and progressive massive fibrosis, claimant adopted Dr. Rosenberg's medical report and submitted it as one of the two affirmative medical reports he was allowed under 20 C.F.R. §725.414. Hearing Transcript at 13-16, 29; Claimant's Exhibit 7.

[5] Employer asserts that there is no proof that the March 13, 2003 and April 23, 2008 x-rays were digital x-rays, and that, since they "appear to be analog," the administrative law judge had to treat them as readings of analog x-rays, in excess of the

23 BLR 1-123, 1-135 (2006) (*en banc*) (Boggs, J., concurring), *aff'd on recon.*, 24 BLR 1-1 (2007) (*en banc*); *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-112 (2006)(*en banc*)(McGranery and Hall, JJ., concurring and dissenting), *aff'd on recon.*, 24 BLR 1-13 (2007)(*en banc*)(McGranery and Hall, JJ., concurring and dissenting). Employer asserts that the administrative law judge erred in failing to consider that Dr. Rosenberg provided no information as to whether the digital x-rays and CT scan were "reliable."[6] Employer's Brief at 5. We disagree. Because the record contained Dr. Hippensteel's uncontradicted statement that CT scans and digital x-rays are medically acceptable and reliable for the diagnosis of pneumoconiosis, the administrative law judge reasonably found it

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evidentiary limitations. Employer's Brief at 4-5. Assuming, *arguendo*, that these two x-ray readings were of analog, and not digital, x-rays, and that there was no basis for their admissibility, employer does not explain how the exclusion of Dr. Rosenberg's two readings would affect the administrative law judge's finding that the overall x-ray evidence "overwhelmingly" established the existence of complicated pneumoconiosis, or how Dr. Rosenberg's review of these two x-rays affected the credibility of his medical report diagnosing the disease. The record reflects that Dr. Rosenberg read the March 13, 2003 x-ray as positive for simple pneumoconiosis only. Regarding the April 23, 2008 x-ray, Dr. Rosenberg did not provide a Category A, B, or C classification of the 9.0 and 4.0 centimeter opacities he noted, as required by 20 C.F.R. §718.304(a), though he did describe them as "large opacities." Employer's argument is that the administrative law judge erred in finding Dr. Rosenberg's report well-documented if he considered inadmissible evidence. Employer's Brief at 5. Employer's contention is without merit. Consideration of inadmissible evidence does not render a report less than well-documented. Employer does not assert that consideration of this evidence unduly prejudiced the doctor's opinion. In the absence of prejudice, any error is harmless. *Shinseki v. Sanders*, 556 U.S. 396, --- n.4, 129 S.Ct. 1696, 1705-06 n.4 (2009). In sum, any error by the administrative law judge regarding the March 13, 2003 and April 23, 2008 x-rays would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[6] Because digital x-rays and CT scans constitute "other medical evidence" under 20 C.F.R. §718.107, the regulations contain no technical quality standards for the administration of these tests. Thus, employer's argument that Dr. Rosenberg needed to specify "how the studies were administered, the technique used, the time that they were administered, or the name of the technician that administered them," is misplaced. Employer's Brief at 5. Under Section 718.107, medical tests or procedures need only be shown to be "medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits," to be considered by the administrative law judge. 20 C.F.R. §718.107(b).

unnecessary for Dr. Rosenberg to submit a separate statement to the same effect. *See* 20 C.F.R. §718.107(b); Decision and Order at 30 n.25.

Employer's argument that it did not receive a full and fair hearing, because it lacked notice that claimant would rely on the readings by Dr. Rosenberg of the above x-rays and CT scan, lacks merit. Employer's Brief at 4. At the hearing, claimant substituted Dr. Rosenberg's medical report for that of Dr. Sargent, and employer was given an opportunity to respond to Dr. Rosenberg's report with post-hearing evidence. Hearing Transcript at 13-16, 29; Decision and Order at 4 n.1. Employer did not respond. Thus, we reject employer's argument that it was not afforded a full and fair hearing. 20 C.F.R. §725.455(c).

Complicated Pneumoconiosis

To establish entitlement 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. Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which (A) when diagnosed by x-ray, yields an opacity greater than one centimeter in diameter that would be classified as Category A, B, or C; (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung;[7] or (C) when diagnosed by other means, would be a condition that could reasonably be expected to reveal a result equivalent to (A) or (B). *See* 20 C.F.R. §718.304; *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991)(*en banc*). In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-1143, 1145-46 (4th Cir. 1993); *Gollie v. Elkay Mining Corp.*, 22 BLR 1-306, 1-311 (2003); *Melnick*, 16 BLR at 1-33-34.

Pursuant to Section 718.304(a), the administrative law judge considered ten readings of four x-rays, and considered the readers' radiological qualifications. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53, 16 BLR 2-61, 2-66 (4th Cir. 1992). Dr. Alexander, a dually-qualified Board-certified radiologist and B reader, interpreted the

[7] The record contains no biopsy or autopsy evidence. Decision and Order at 27.

May 6, 2008 x-ray as "2/2" for small opacities of simple pneumoconiosis, and as positive for Category B large opacities. Claimant's Exhibit 1. Dr. Wheeler, also a Board-certified radiologist and B reader, interpreted the same x-ray as negative for small opacities of simple pneumoconiosis, and as negative for large opacities, describing masses greater than one centimeter in diameter that he opined were compatible with granulomatous disease, with histoplasmosis as the more likely cause than tuberculosis. Employer's Exhibit 3.

Dr. Forehand, a B reader, interpreted the August 26, 2008 x-ray as "1/1" for small opacities, and as positive for Category B large opacities. Director's Exhibit 13. Dr. Alexander classified the same x-ray as "2/2" for small opacities, and as positive for Category B large opacities. Claimant's Exhibit 2. Dr. Wheeler interpreted the same x-ray as "1/1" for small opacities of simple pneumoconiosis, and as negative for large opacities, again describing masses greater than one centimeter in diameter, compatible with granulomatous disease and histoplasmosis.[8] Director's Exhibit 12.

Dr. Rosenberg, a B reader, interpreted the October 21, 2008 x-ray as "2/2" for small opacities, and as positive for Category B large opacities. Claimant's Exhibit 7. Dr. Miller, a Board-certified radiologist and B reader, also interpreted this x-ray as "2/2" for small opacities, and as positive for Category B large opacities. Claimant's Exhibit 6. Dr. Wheeler classified the same x-ray as "1/0" for small opacities, and as negative for large opacities, and described masses greater than one centimeter compatible with granulomatous disease and histoplasmosis. Employer's Exhibit 8.

Dr. Miller interpreted the January 30, 2009 x-ray as "2/2" for small opacities, and as positive for Category B large opacities. Claimant's Exhibit 5. Dr. Wheeler classified the same x-ray as "0/1" for small opacities, and as negative for large opacities, describing masses greater than one centimeter compatible with granulomatous disease and histoplasmosis. Employer's Exhibit 5.

The administrative law judge found that the preponderance of the x-ray readings established the existence of complicated pneumoconiosis, based on the findings of Category B large opacities. Decision and Order at 21-27. The administrative law judge noted that all of the physicians agreed that claimant has a disease process causing masses larger than one centimeter in diameter, visible on x-ray, in both of his lungs. She noted further that Dr. Wheeler was the only physician who did not find complicated pneumoconiosis on claimant's x-rays. The administrative law judge discounted the negative readings by Dr. Wheeler, because there was no evidence that claimant was ever

[8] Dr. Barrett, a Board-certified radiologist and B reader, reviewed the August 26, 2008 x-ray to assess its film quality only. Director's Exhibit 13.

diagnosed with, or treated for, the alternative diseases that Dr. Wheeler identified as possible causes of the large masses in claimant's lungs. The administrative law judge also discounted Dr. Wheeler's negative readings because she found that his statement, that complicated pneumoconiosis is rare in miners who worked after World War II, did not explain why claimant could not be one of those younger miners who has developed complicated pneumoconiosis.

Employer contends that the administrative law judge erred in discounting Dr. Wheeler's negative x-ray readings based on "medical opinion evidence[, which] is not relevant" to the weighing of x-ray readings. Employer's Brief at 13. We disagree. The administrative law judge permissibly accorded less weight to Dr. Wheeler's opinion that the large opacities he observed were granulomatous disease and not complicated pneumoconiosis, because Dr. Forehand, claimant's treating physician, reported that tests he had ordered for histoplasmosis, tuberculosis, sarcoidosis, and cancer, were negative, and because there was no evidence in the record that claimant was diagnosed with, or treated for, any granulomatous disease. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285, --- BLR --- (4th Cir. 2010). Moreover, employer does not challenge the administrative law judge's alternative determination to discount Dr. Wheeler's negative readings, because his view that complicated pneumoconiosis would be rare in miners with dust exposure after World War II, even if accepted as correct, did not adequately explain why claimant could not be one of those rare miners who contracted the disease. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103-04 (7th Cir. 2008); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We therefore affirm the administrative law judge's finding at Section 718.304(a).

Pursuant to Section 718.304(c), the administrative law judge considered the medical opinions of Drs. Forehand, Rosenberg, and Hippensteel, along with their review of digital x-rays and CT scans.[9] Decision and Order at 27-30. Dr. Forehand, in his report dated August 26, 2008, diagnosed claimant with complicated coal workers' pneumoconiosis with progressive massive fibrosis. Director's Exhibit 13. Subsequently, in a January 19, 2009 progress record, Dr. Forehand indicated that claimant has bilateral upper lobe masses consistent with complicated coal workers' pneumoconiosis, but "also possibly consistent with other additional diagnoses such as sarcoidosis, tuberculosis, histoplasmosis, or cancer." Claimant's Exhibit 3. Dr. Forehand noted that he drew blood

[9] The administrative law judge considered the digital x-rays and CT scans, both in the context of reviewing the physician's opinions, and separately, as "other medical evidence" under 20 C.F.R. §718.107. Decision and Order at 28-31. We reject employer's allegation that the administrative law judge erred in the manner in which she grouped the various forms of evidence when she weighed them. Employer's Brief at 12-13.

for "CEA, ACE[10] and histoplasma serology" tests, and placed "PPD and Candida" on claimant's forearms. While indicating that he would await the results of those tests before making any further recommendations, Dr. Forehand recorded as his impression, "Complicated coal workers' pneumoconiosis with the possibility of an additional diagnosis. The possibility of an alternative diagnosis is not realistic." *Id.* Six months later, in a July 24, 2009 letter to Stone Mountain Health Services, Dr. Forehand reported that the medical testing he performed "show[ed] that there is no evidence of" histoplasmosis, lung cancer, tuberculosis, or sarcoidosis.[11] *Id.* Dr. Forehand therefore concluded that claimant has complicated coal workers' pneumoconiosis with progressive massive fibrosis, "without evidence of additional factors that might contribute to the appearance of his chest x-ray." *Id.* Dr. Forehand advised that there was "no reason" for claimant to "undergo a risky lung biopsy to further confirm the diagnosis . . . when the appearance of the chest x-ray is so typical of complicated coal workers' pneumoconiosis. . . ." *Id.*

In a report dated November 10, 2008, Dr. Rosenberg reviewed the examination findings he had recorded, x-rays, objective tests, and a CT scan, and opined that claimant "has classic findings of coal workers' pneumoconiosis (CWP) with progressive massive fibrosis (PMF)." Claimant's Exhibit 7 at 4. Dr. Rosenberg added that, although claimant's findings were "classic for PMF," given claimant's weight loss, and a family history of cancer, "there is always concern that he may also have a carcinoma."[12] *Id.*

Dr. Hippensteel examined and tested claimant, and reviewed additional medical evidence. In reports dated July 31, 2009 and March 8, 2010, and in a deposition dated May 12, 2010, Dr. Hippensteel opined that claimant has "significant abnormalities on his chest x-ray associated with severe debility and pulmonary impairment," and does not have complicated pneumoconiosis but, rather, has a granulomatous disease, such as sarcoidosis, which can mimic the appearance of coal workers' pneumoconiosis. Employer's Exhibits 1 at 5; 9; 12 at 17, 20. Dr. Hippensteel noted that claimant had an angiotensin converting enzyme (ACE) level of 75, "consistent with a diagnosis of

[10] According to Dr. Hippensteel's medical report, "CEA" is "carcinoembryonic antigen," and "ACE" is "angiotensin converting enzyme." Employer's Exhibit 1 at 3.

[11] Dr. Forehand stated that although the "ACE level (test for sarcoidosis) is 72 and is very slightly above the normal range (12-68), a value of 72 is *far below* what would be seen in a case of sarcoidosis." Claimant's Exhibit 3 at 1 n.1 (emphasis added).

[12] In view of Dr. Rosenberg's concern about cancer, he advised claimant to follow up with his personal physician. Claimant's Exhibit 7 at 4. As summarized above, Dr. Forehand later tested claimant for cancer, and ruled it out. Claimant's Exhibit 3.

sarcoidosis." Employer's Exhibit 1 at 3. Dr. Hippensteel noted at his deposition that the ACE level can "often" be elevated with sarcoidosis, and stated that he disagreed with Dr. Forehand's conclusion that claimant does not have sarcoidosis, because Dr. Forehand failed to include the ACE level test results in his report. Employer's Exhibit 12 at 17-18.

The administrative law judge found that the opinions of Drs. Forehand and Rosenberg were well-reasoned, and supported by the x-ray evidence as well as the additional testing that was conducted by Dr. Forehand. The administrative law judge discounted Dr. Hippensteel's opinion that claimant has sarcoidosis, because Dr. Hippensteel relied on the ACE level of 75 that he obtained, stating that ACE is "often" elevated with sarcoidosis, while ignoring, without adequate explanation, Dr. Forehand's ACE level result of 72, and Dr. Forehand's opinion that claimant's ACE level was only very slightly above normal, and "far below" the level that would be seen with a case of sarcoidosis. The administrative law judge stated that she chose to accord determinative weight to Dr. Rosenberg's opinion because, after both examining claimant and reviewing the medical evidence, he described how claimant's simple coal workers' pneumoconiosis progressed to complicated coal workers' pneumoconiosis, with progressive massive fibrosis. The administrative law judge found that Dr. Rosenberg's opinion was supported by both the objective evidence and Dr. Forehand's opinion.[13]

Employer contends that the opinions of Drs. Rosenberg and Forehand were not well-reasoned, because the doctors based their opinions on x-ray evidence, and did not explain their conclusions. Employer's Brief at 6-7. Employer's contention lacks merit. Substantial evidence supports the administrative law judge's discretionary determination that Drs. Rosenberg and Forehand provided well-reasoned opinions diagnosing complicated pneumoconiosis. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). X-rays provide the "benchmark" for determining whether statutory complicated pneumoconiosis is present. *Scarbro*, 220 F.3d at 255, 22 BLR at 2-100. Thus, the administrative law judge did not err in finding medical reports that focused primarily on claimant's x-ray findings to be well-reasoned. Moreover, contrary to employer's suggestion that the opinions of Drs. Rosenberg and Forehand were merely restatements of x-ray readings, the physicians considered other

[13] The administrative law judge found that the CT scan evidence, standing alone, neither established nor contradicted the presence of complicated pneumoconiosis. Decision and Order at 30-31.

factors as well.[14] *See Hicks*, 138 F.3d at 532, 21 BLR at 2-334; *Akers*, 131 F.3d at 441-42, 21 BLR at 2-274-76; Director's Exhibit 13; Claimant's Exhibits 3, 7.

Further, we reject employer's contention that the administrative law judge erred in failing to discount the opinions of Drs. Rosenberg and Forehand because they considered a coal mine employment history of twenty-eight years,[15] when the administrative law judge found just under twelve years established. The administrative law judge considered the coal mine employment history issue, and reasonably determined that it did "not significantly detract from the probative value of [the physicians'] conclusions," as they were based primarily on a review of claimant's x-ray findings. Decision and Order at 30 n.24.

Employer argues that the administrative law judge erred in discounting Dr. Hippensteel's opinion that claimant has sarcoidosis, not complicated pneumoconiosis. Upon review, we conclude that substantial evidence supports the administrative law judge's determination to discount Dr. Hippensteel's opinion. As the administrative law judge found, although Dr. Hippensteel stated that he reviewed Dr. Forehand's report, he apparently did not consider Dr. Forehand's reporting on July 24, 2009, that claimant does not have sarcoidosis because his ACE level is 72, "far below" the level that would be associated with sarcoidosis.[16] Given the lack of clarity as to Dr. Hippensteel's deposition

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[14] In reaching his diagnosis, Dr. Forehand also considered a twenty-eight year history of coal mine employment, claimant's shortness of breath, his pulmonary function study, and negative tests for histoplasmosis, lung cancer, tuberculosis, or sarcoidosis. Director's Exhibit 13; Claimant's Exhibit 3. Dr. Rosenberg considered not only chest x-ray readings, but also a CT scan reading, the results of a pulmonary function study revealing severe airflow obstruction with decreased diffusing capacity, and a coal mine employment history of twenty-eight years. Claimant's Exhibit 7.

[15] The record reflects that all of the physicians in this case considered a coal mine employment history of twenty-eight years.

[16] Dr. Hippensteel testified:

> And I reviewed a letter from Dr. Forehand today before this deposition that I had not had available to me at the time that I made my last report. This letter was dated July 24th, 2009, *and he stated that he was going to get an angiotensin converting enzyme level, but the test results that he included in his reports did not include such a level* that was looking for a diagnosis such as sarcoidosis.
>
> *So since he doesn't include that in his letter* as a – something to refer to and since I do have a level that I obtained at my examination that was elevated

testimony, we cannot say that the administrative law judge's conclusion, that Dr. Hippensteel believed that Dr. Forehand had not obtained and reported an ACE level result, was erroneous. *See* Decision and Order at 14, 29. In view of Dr. Forehand's statement that claimant's ACE level of 72 was "far below" the level for sarcoidosis, and given Dr. Hippensteel's failure to discuss these results from a report that he stated he reviewed, the administrative law judge acted within her discretion in declining to find that Dr. Hippensteel's diagnosis of sarcoidosis undercut either the x-ray evidence, or the other medical opinion evidence, that claimant has complicated pneumoconiosis. *Scarbro*, 220 F.3d at 255, 22 BLR at 2-100; *Hicks*, 138 F.3d at 532, 21 BLR at 2-334; *Akers*, 131 F.3d at 441-42, 21 BLR at 2-274-76. Therefore, we affirm the administrative law judge's finding that the preponderance of the medical opinion evidence established the existence of complicated pneumoconiosis at Section 718.304(c).[17]

Weighing all of the evidence together under Section 718.304, the administrative law judge found that the preponderance of the medical evidence established complicated pneumoconiosis, and invocation of the irrebuttable presumption of total disability due to pneumoconiosis. Decision and Order at 31, 33-34. Substantial evidence supports this finding, which is, therefore, affirmed.

> consistent with sarcoidosis, *I don't think that the conclusions that he made in his letter of July 24th, 2009, are valid since he misses including the angiotensen converting enzyme level* as a finding in this particular case that really favors sarcoidosis of a conglomerate-type causing large opacities in this case as a cause for this abnormality.

Employer's Exhibit 12 at 17-18 (emphasis added).

[17] Because the administrative law judge chose to rely primarily on the medical report of Dr. Rosenberg, who is Board-certified in Internal Medicine and Pulmonary Disease, and discounted the reasoning of the equally-qualified Dr. Hippensteel, employer's argument that she did not adequately consider Dr. Forehand's lesser credentials is moot.

Accordingly, the administrative law judge's Decision and Order 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