BRB No. 95-2257 BLA

B. F. CAUDILL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:
CUMBERLAND RIVER 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 of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson and Kilcullen), Washington, D.C., for employer.

Cathryn Celeste Helm (J. Davitt McAteer, Acting 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, the United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order (94-BLA-1923) of Administrative

Law Judge Paul H. Teitler awarding benefits on a claim[1] 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

[1] Claimant is B. F. Caudill, the miner, whose application for benefits filed on October 26, 1992 was administratively denied on April 12, 1993 and again on April 19, 1994 after consideration of additional evidence. Director's Exhibits 1, 18, 44.

et seq. (the Act). The administrative law judge accepted the parties' stipulation to twenty-seven years of coal mine employment and found employer to be the responsible operator. The administrative law judge found the existence of totally disabling pneumoconiosis arising out of coal mine employment established pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b), and 718.204 and, accordingly, awarded benefits.

On appeal, employer challenges the administrative law judge's weighing of the evidence pursuant to Sections 718.202(a)(4) and 718.204. Employer further contends that the administrative law judge erred in ordering benefits to be payable as of January 1, 1992. The Director, Office of Workers' Compensation Programs (the Director), has filed a response limited to employer's challenge to the date for the commencement of benefits, urging the Board to hold that October 1, 1992 is the correct onset date if it affirms the award of benefits.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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).

The administrative law judge considered the medical opinion evidence pursuant to Section 718.202(a)(4). All five physicians of record examined and tested claimant, prepared reports, and were deposed. Drs. Chaney, Baker, Wright, and Sundaram diagnosed pneumoconiosis, while Dr. Broudy opined that claimant suffered from bronchitis due to smoking. Director's Exhibits 13, 14, 34, 40-42; Claimant's Exhibits 6, 7. The administrative law judge considered Dr. Broudy's board-certification in internal and pulmonary medicine, Decision and Order at 8, but concluded that his report was not "persuasive or sufficient to outweigh the reports of the other physicians, one of whom is board[-]certified in internal medicine, another

[2] We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment, responsible operator status, and pursuant to 20 C.F.R. §§718.202(a)(1)-(3), 718.203(b), and 718.204(c)(1)-(3). *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co*., 6 BLR 1-710 (1983).

being board[-]certified in internal medicine and pulmonary disease." Decision and Order at 10.

Because the administrative law judge permissibly found that the preponderance of the medical opinion evidence, viewed in light of the physicians' qualifications,[3] established the existence of pneumoconiosis, *see Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984), we reject employer's contention that he failed to provide a valid rationale for crediting the opinions of Drs. Chaney, Baker, Wright, and Sundaram over that of Dr. Broudy. Employer's Brief at 14. We also reject employer's assertion that the opinions diagnosing pneumoconiosis should not have been credited because they relied primarily on positive x-rays when the administrative law judge had determined that the weight of the x-ray evidence was negative. Employer's Brief at 9. Contrary to employer's contention, an administrative law judge may not discredit a medical opinion merely because it relies on a positive x-ray interpretation that conflicts with the weight of the x-ray evidence. *Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *see also Taylor v. Director, OWCP*, 9 BLR 1-22 (1986). Furthermore, contrary to employer's assertion, Employer's Brief at 14, the administrative law judge was not required to weigh the objective medical evidence against each individual medical report in determining whether it was reasoned and documented. *See Trumbo v. Reading Anthracite Co*., 17 BLR 1-85 (1993). We also reject employer's contention that Dr. Sundaram's opinion was unreasoned, Employer's Brief at 11. Review of his opinion in its entirety indicates that he did not assume that claimant had pneumoconiosis merely because he was exposed to coal dust for more than ten years, but rather, explained how the physical findings, chest x-ray, and coal dust exposure history obtained in his treatment of claimant supported his diagnosis. Claimant's Exhibit 7 at 7-22. Therefore, we reject employer's contention and affirm the administrative law judge's finding pursuant to Section 718.202(a)(4).

However, as employer contends, the administrative law judge erred pursuant to Section 718.204(c). Employer's Brief at 16-17. He found total respiratory disability established because he believed that all the physicians of record concluded that claimant was totally disabled. Decision and Order at 13. In fact, Dr. Broudy opined that claimant retained the capacity to perform underground coal mine employment or "similarly arduous manual labor." Director's Exhibit 40. Further, the

[3] The record indicates that like Dr. Broudy, Dr. Baker is board-certified in both internal and pulmonary medicine, while Dr. Sundaram is board-certified in internal medicine. Director's Exhibit 42 at 3; Claimant's Exhibit 7 at 3.

administrative law judge failed to weigh all the relevant evidence[4] together to determine whether total respiratory disability was established, *see Beatty v. Danri Corporation and Triangle Enterprises*, 16 BLR 1-11 (1991); *Fields v. Island Creek Coal Co*., 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp*., 9 BLR 1-195 (1986), but found that claimant was totally disabled based on the medical opinions alone. Decision and Order at 13.

[4] None of the pulmonary function or blood gas studies was qualifying. Director's Exhibits 12, 15, 34, 41; Claimant's Exhibit 7. A "qualifying" objective study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

In addition, despite the fact that several of the medical opinions were phrased in terms of the exertional requirements of claimant's coal mine work,[5] the administrative law judge failed to make a finding regarding the nature of claimant's usual coal mine employment[6] or compare those opinions with claimant's job duties. *See Budash v. Bethlehem Mines Corp.,* 9 BLR 1-48, *aff'd on recon.*, 9 BLR 1-104 (1986)(*en banc*); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989). Therefore, we must vacate the administrative law judge's finding pursuant to 718.204(c) and remand the case for further consideration.

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[5] Dr. Baker opined that if claimant's job required hard labor, his moderate obstruction prevented him from performing it. Director's Exhibit 42. Dr. Chaney stated that while claimant's impairment may allow him to perform a sedentary job, it would prevent him from performing the duties required of a tipple operator. Claimant's Exhibit 6 at 10, 19. Dr. Broudy opined that despite claimant's moderate ventilatory impairment, he retained the capacity to do the "work of an underground coal miner or similarly arduous manual labor." Director's Exhibit 40.

[6] The administrative law judge stated only that "claimant last worked as a cutting machine operator, underground." Decision and Order at 3. In fact, claimant indicated that he had been a tipple operator for the last twenty-three years and described the exertional requirements of this job. Director's Exhibit 10; Hearing Transcript at 8-14, 22. The record indicates that claimant worked as a cutting machine operator before becoming a tipple operator, Hearing Transcript at 8; Director's Exhibit 2 at 2, but does not contain any evidence that he changed jobs because of a reduced ability to perform cutting machine work.

Pursuant to Section 718.204(b), the administrative law judge applied the causation standard enunciated in *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52, 2-63 (6th Cir. 1989) in finding claimant's total disability due in part to pneumoconiosis. Decision and Order at 13. Therefore, we reject employer's assertion that the administrative law judge applied the wrong disability causation test. Employer's Brief at 18-19. As employer correctly contends, however, the administrative law judge failed to provide an adequate rationale for his finding that the evidence established that claimant's total disability was due at least in part to pneumoconiosis. Employer's Brief at 19-21.

Dr. Wright opined that claimant's disabling respiratory impairment was "probably related to extra-pulmonary causes," namely obesity and smoking, but conceded on cross-examination that he could not rule out coal dust exposure as a causative factor. Director's Exhibit 34. Dr. Broudy believed that claimant was not totally disabled, but acknowledged a reduction in the FEV1 value on his pulmonary function testing. Director's Exhibit 41 at 21. He attributed this decline to cigarette smoking, but conceded on cross-examination that he could not rule out coal dust as a factor. Director's Exhibit 41 at 22-23. Drs. Chaney, Sundaram, and Baker opined that claimant was totally disabled due to the effects of both smoking and coal dust exposure. Director's Exhibits 34, 42; Claimant's Exhibits 6, 7.

The administrative law judge, without analysis of the foregoing medical reasoning, found that "the reports of Drs. Chaney, Sundaram, Baker, and Wright [are] sufficient to establish" total disability due to pneumoconiosis under *Adams*. Decision and Order at 13. The administrative law judge then found that the reports of Drs. Wright, Baker, Chaney, and Sundaram outweighed the report of Dr. Broudy because Dr. Broudy failed to explain how he could rule out coal dust exposure as a causative factor. *Id*. Because the administrative law judge has not explained how Dr. Wright's opinion supports a finding of total disability due to pneumoconiosis, nor indicated how much weight he assigned to the evidence regarding claimant's smoking and obesity[7] in the disability causation inquiry, *see Lafferty v. Cannelton Industries, Inc*., 12 BLR 1-190 (1989), we vacate the administrative law judge's finding pursuant to Section 718.204(b).

[7] Both Drs. Wright and Sundaram discussed claimant's obesity as a causative factor. Director's Exhibit 34; Claimant's Exhibit 7 at 17. Although the administrative law judge noted claimant's testimony that he smoked one pack of cigarettes per day for twenty-five to thirty years, Decision and Order at 3; Hearing Transcript at 18, he did not discuss the varied smoking histories recorded by the physicians, which ranged from one to one-and-a-half packs of cigarettes per day for thirty to forty years. Director's Exhibits 13, 34, 40.

Therefore, we remand this case for the administrative law judge to consider all the relevant evidence of record regarding the nature and the exertional requirements of claimant's coal mine employment in determining whether the medical opinion evidence establishes total respiratory disability pursuant to Section 718.204(c)(4). *See Budash*, *supra*; *Onderko*, *supra*. If the administrative law judge finds that it does, and concludes that all the relevant evidence weighed together establishes total respiratory disability, *see Beatty*, *supra*; *Fields*, *supra*; *Shedlock*, *supra*, he must then evaluate all the relevant evidence to determine whether claimant's total disability is due, at least in part, to pneumoconiosis pursuant to Section 718.204(b). *See Adams*, *supra*. In addition, as the administrative law judge's order specifying January 1, 1992 as the date for the commencement of benefits conflicts with his finding of October 1, 1992 as the onset date, we instruct him on remand to clarify his order regarding the date for the commencement of benefits, if awarded.

Employer has filed a supplemental appeal of the administrative law judge's Supplemental Decision and Order awarding an attorney's fee to claimant's counsel. Because we remand this case for further consideration of the merits of entitlement, and no fee award is effective until there is a successful prosecution of the claim and all appeals are exhausted, *Goodloe v. Peabody Coal Co*., 19 BLR 1-91, 1-100 n.9 (1995), we decline to address employer's appeal.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge