

BRB No. 08-0600 BLA

R. K.)
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 Claimant-Petitioner)
)
 v.)
)
 PBS COALS, INCORPORATED)
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 and)
)
 ROCKWOOD CASUALTY INSURANCE) DATE ISSUED: 04/07/2009
 COMPANY)
)
 Employer-Respondent)
)
 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 – Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Sean B. Epstein (Pietragallo, Bosick & Gordon LLP), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand – Denying Benefits (04-BLA-5057) of Administrative Law Judge Daniel L. Leland (the administrative law judge)

rendered on a subsequent claim¹ 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 is the third time this case is before the Board.²

The last time this case was before the Board, pursuant to employer's appeal, the Board held that the administrative law judge did not provide valid reasons for discrediting Dr. Fino's opinion that claimant does not have pneumoconiosis, or for finding the opinions of Drs. Begley and Schaaf, that claimant has pneumoconiosis, to be well-reasoned and documented under 20 C.F.R. §718.202(a)(4).³ The Board further held that the administrative law judge erred in crediting Dr. Begley's opinion based upon his status as claimant's treating physician. Consequently, the Board vacated the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(c), and remanded the case for further consideration. *R.K. v. PBS Coal, Inc.*, BRB No. 07-0180 BLA (Oct. 24, 2007) (unpub.), slip op. at 6-8.

On remand, the administrative law judge determined that the medical opinion evidence did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Weighing all of the relevant evidence together, the administrative law judge found that the evidence did not establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a). Because claimant did not establish the existence of pneumoconiosis, the administrative law judge found that claimant could not establish that his total

¹ Claimant filed his initial claim for benefits on February 26, 1996. Director's Exhibit 1. The district director denied benefits on June 12, 1996, because claimant did not establish the existence of pneumoconiosis or that he was totally disabled due to pneumoconiosis. *Id.* There is no indication that claimant took any further action until filing the instant claim on January 25, 2002. Director's Exhibit 3.

² The complete procedural history of this case, set forth in the Board's prior decisions in [*R.K.*] *v. PBS Coal, Inc.*, BRB No. 05-0606 BLA (Apr. 27, 2006) (unpub.), and *R.K. v. PBS Coal, Inc.*, BRB No. 07-0180 BLA (Oct. 24, 2007) (unpub.), is incorporated by reference.

³ The Board had previously affirmed, as unchallenged, the administrative law judge's findings that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3). [*R.K.*], BRB No. 05-0606, slip op. at 2. The Board had also noted that the administrative law judge was not required to determine whether a change in an applicable condition of entitlement was established pursuant to 20 C.F.R. §725.309(d) because employer conceded at the hearing that claimant has a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). *Id.* at 2 n.2.

disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of legal pneumoconiosis and that claimant's disabling respiratory impairment is not due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law.⁴ 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Relevant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered three medical opinions. Drs. Begley and Schaaf opined that claimant suffers from chronic obstructive pulmonary disease attributable to both smoking and coal mine dust exposure. Claimant's Exhibits 4, 7, 9, 10. Dr. Fino opined that claimant's chronic obstructive pulmonary disease is due solely to smoking. Employer's Exhibit 5. The administrative law judge found that the opinions of Drs. Begley and Schaaf were not well-reasoned, because both physicians based their opinions on generalities, rather than on the facts of this specific case:

Drs. Begley and Schaaf opined that coal dust exposure may cause obstructive airway disease, however, neither physician was able to identify anything about *Claimant's case*, other than his exposure to coal mine dust, that would lead them to conclude that coal dust was a contributing factor. Both physicians use the proposition that coal dust can cause obstruction to

⁴ The law of the United States Court of Appeals for the Third Circuit is applicable as claimant was last employed in the coal mining industry in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

suggest that it is a contributing factor in *Claimant's* case. The opinions of Drs. Begley and Schaaf are based on generalities as neither physician was able to identify whether *Claimant's* COPD and chronic bronchitis were caused by *his* coal dust exposure. Drs. Begley and Schaaf failed to apply the objective medical evidence of record to support their respective conclusions, and, as such, their opinions are conclusory. I find that the opinions of Drs. Begley and Schaaf are not well reasoned, and they are accorded less weight.

Decision and Order at 3 (citations omitted). The administrative law judge also found that, although Dr. Begley's interactions with claimant established that he is a treating physician, Dr. Begley's opinion was not entitled to increased weight because it was not well-reasoned. *Id.* The administrative law judge also determined that Dr. Fino's opinion, that claimant does not have pneumoconiosis, was well-reasoned and documented, and he accorded it significant weight. The administrative law judge therefore found that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *Id.*

Claimant contends that substantial evidence does not support the administrative law judge's finding that the opinions of Drs. Begley and Schaaf were based on generalities rather than on the specifics of claimant's case. Claimant's Brief at 4. We agree. Contrary to the administrative law judge's finding, the record reflects that Drs. Begley and Schaaf did not rely solely on the proposition that coal dust may cause obstruction, but cited to medical evidence in this claim to conclude that coal mine dust exposure contributed to claimant's obstruction. Dr. Begley stated that his opinion was based on claimant's history of smoking and "heavy" coal dust exposure, claimant's chronic daily productive cough, and the results of his pulmonary function and blood gas studies. Claimant's Exhibit 10 at 10, 26, 28. Dr. Begley additionally stated that his opinion was specific to claimant's individual circumstances, *Id.* at 28, and that he included coal dust exposure as having caused or aggravated claimant's chronic bronchitis, because "coal dust is not broken down by the immune system so that the coal dust being chronically within the lungs can cause aggravating conditions like chronic bronchitis," *Id.* at 30, and because claimant "continued to have chronic bronchitis even during periods of time [that] he wasn't smoking." *Id.* at 29. Further, Dr. Schaaf explained that his opinion was based on claimant's symptoms; the airflow rates seen in claimant's pulmonary function studies; the presence of hypercarbia and a fall in PO₂ during exercise, seen on claimant's blood gas studies; and the fact that claimant had two exposures that lead to a risk of chronic bronchitis. Claimant's Exhibit 9 at 22, 28, 56. Dr. Schaaf additionally explained that the medical literature shows that coal dust exposure can cause significant and debilitating chronic obstructive pulmonary disease, and he concluded that the case at hand is one of those cases. *Id.* at 23-24, 48.

Because substantial evidence does not support the administrative law judge's finding that the opinions of Drs. Begley and Schaaf are not specific to claimant, we must vacate his finding pursuant to 20 C.F.R. §718.202(a)(4) and remand the case for further consideration. *See Mancina v. Director, OWCP*, 130 F.3d 579, 584, 21 BLR 2-215, 2-234 (3d Cir. 1997). On remand, the administrative law judge must reconsider the opinions of Drs. Begley and Schaaf. Although the administrative law judge is not obligated to credit either opinion, he must address whether the physicians' rationales support their conclusions, and explain the basis for his credibility determinations. *See Lango v. Director, OWCP*, 104 F.3d 573, 578, 21 BLR 2-12, 2-20 (3d Cir. 1997).

Further, because the administrative law judge's finding that Dr. Begley's opinion is not entitled to enhanced weight is premised on a credibility determination that we have vacated, we additionally vacate the administrative law judge's finding under 20 C.F.R. §718.104(d). On remand, the administrative law judge must reconsider whether Dr. Begley's opinion is entitled to enhanced weight in light of his status as claimant's treating physician. *See* 20 C.F.R. §718.104(d).

We also find merit in claimant's assertion that the administrative law judge did not state a valid reason for crediting Dr. Fino's opinion. Claimant's Brief at 4-5. Although the administrative law judge, in observing that Dr. Fino explained his opinion, accurately characterized and set forth Dr. Fino's opinion, the administrative law judge did not explain the basis for his finding that Dr. Fino's opinion was well-reasoned and entitled to significant weight. Consequently, the administrative law judge, on remand, must examine the validity of Dr. Fino's opinion and determine whether Dr. Fino adequately explained the basis for his conclusion. *See Lango*, 104 F.3d at 578, 21 BLR at 2-20; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 1327, 10 BLR 2-220, 2-233 (3d Cir. 1987).

On remand, when considering whether the medical opinion evidence establishes the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, and the documentation underlying their medical judgments. *See Lango*, 104 F.3d at 578, 21 BLR at 2-20. Further, the administrative law judge must explain his credibility determinations. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2).

In light of our determination to vacate the administrative law judge's finding as to the existence of pneumoconiosis, we additionally vacate his finding that pneumoconiosis is not a substantially contributing cause of claimant's total disability under 20 C.F.R. §718.204(c). If reached, on remand, the administrative law judge must consider the

relevant evidence on this issue and explain his credibility determinations pursuant to 20 C.F.R. §718.204(c).

Accordingly, the administrative law judge's Decision and Order on Remand – Denying Benefits is vacated, and the case is remanded to the administrative law judge 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