BRB No. 99-1305 BLA

GARY L. HOWARD	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MARTIN COUNTY COAL CORPORATION	)	DATE ISSUED:
	)	
	)	
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 Awarding Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Natalie D. Brown (Jackson & Kelly PLLC), Lexington, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (99-BLA-0400) of Administrative Law Judge Thomas F. Phalen, Jr. on a duplicate 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). The administrative law judge, adjudicating this claim pursuant to 20 C.F.R. Part 718, initially credited the parties' stipulation that claimant worked in qualifying coal mine employment for twelve and one-half years.

[1] Claimant is Gary L. Howard, the miner, who filed his first application for benefits on December 16, 1991, which was denied in a Decision and Order rendered by Administrative

Next, the administrative law judge found that claimant established a material change in conditions pursuant to 20 C.F.R. §725.309(d) because the newly submitted evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an element that was previously adjudicated against claimant. *See Sharondale Corp. v. Ross*, 42 F.3d 993, 997-998, 19 BLR 2-10, 2-18 (6th Cir. 1994). Addressing the merits of entitlement, the administrative law judge found that claimant established that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R.§718.203(b) and that he is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, the administrative law judge awarded benefits, commencing as of February 10, 1998, the date on which this claim was filed.

On appeal, employer contests the administrative law judge's determination that claimant established total disability due to pneumoconiosis under Section 718.204(b). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating that he will not participate in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer argues that the administrative law judge failed to properly weigh all of the medical evidence of record under Section 718.204(b). Initially, employer contends that the administrative law judge improperly discounted the opinions of Drs. Dahhan, Branscomb, and Castle on the basis that these physicians did not diagnose pneumoconiosis, when the administrative law judge had found the existence of pneumoconiosis established by the preponderance of x-ray evidence, because each physician nonetheless considered the effect that the presence of pneumoconiosis would have on their opinions regarding the etiology of claimant's total respiratory disability. Employer's argument has merit.

Law Judge Paul H. Teitler on June 14, 1994. Director's Exhibit 29. Claimant did not pursue this denial. On February 10, 1998, claimant filed a duplicate application, which is subject of the case *sub judice*. Director's Exhibit 1.

[2] We affirm the administrative law judge's findings regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a), 718.203(b), 718.204(c), and 725.309(d) inasmuch as these findings are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 4, 11, 13.

Drs. Branscomb, Castle, and Dahhan each opined that claimant's totally disabling respiratory impairment was solely due to tobacco smoke induced chronic bronchitis and bronchial asthma. Director's Exhibits 24, 26; Employer's Exhibits 2, 4. Drs. Branscomb, Castle, and Dahhan went on, however, to conclude that, even assuming that claimant had radiological evidence of simple coal workers' pneumoconiosis, any pulmonary impairment claimant had was the result of cigarette smoking and was neither caused nor aggravated by coal workers' pneumoconiosis or coal dust exposure. Director's Exhibits 24, 26; Employer's Exhibit 2.

A physician's medical opinion regarding the etiology of a miner's total respiratory disability is deprived of probative value where the underlying premise of the medical opinion, *i.e.*, that there is insufficient evidence to establish coal workers' pneumoconiosis, runs contrary to the established fact that the miner did suffer from pneumoconiosis. *Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993), *vac'd sub nom., Consolidated Coal Co. v. Skukan*, 114 S.Ct. 2732 (1994), *rev'd on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *see Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). However, a medical opinion that acknowledges the miner's respiratory or pulmonary impairment, but nevertheless concludes that an ailment other than pneumoconiosis caused the miner's total disability, is relevant because it directly rebuts the miner's evidence that pneumoconiosis contributed to his disability. *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 1193, 19 BLR 2-304, 2-315-316 (4th Cir. 1995), *citing Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995).

In the instant case, the administrative law judge accorded less weight to the opinions of Drs. Branscomb, Castle, and Dahhan because these physicians "did not *diagnose* pneumoconiosis." Decision and Order at 14 [emphasis in original]. In so doing however, the administrative law judge did not consider these physicians' opinions in their entirety. Specifically, they all stated that even assuming claimant had radiological evidence of simple coal workers' pneumoconiosis, they considered any pulmonary impairment claimant had was the result of cigarette smoking and was neither caused nor aggravated by coal workers' pneumoconiosis or coal dust exposure. Director's Exhibits 24, 26; Employer's Exhibit 2. Because the opinions of Drs. Branscomb, Castle, and Dahhan in their entirety regarding the cause of claimant's undisputed total respiratory disability constitute probative evidence which warrants due consideration by the administrative law judge, we vacate the administrative law judge's Section 718.204(b) determination and remand the case for further consideration of the medical opinion evidence. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 535, 21 BLR 2-323, 2-340 (4th Cir. 1998). In particular, the administrative law judge must discuss the opinions of Drs. Branscomb, Castle, and Dahhan in their entirety and assess the weight, if any, to assign their opinions as compared to the other physicians' opinions of record. *See*

Director, OWCP v. Rowe, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983).

Employer similarly argues that the administrative law judge erroneously found that Drs. Branscomb, Castle, and Dahhan did not establish a sound, medical basis for ruling out coal dust exposure entirely as a contributing factor in claimant's totally disabling condition in light of the fact that each physician explained the basis for his opinion that pneumoconiosis did not contribute to claimant's total disability. We agree.

The administrative law judge accorded less weight to the opinions of Drs. Branscomb, Castle, and Dahhan because they failed to provide a "sound" medical basis for wholly rejecting claimant's coal dust exposure involvement, but he failed to explain why he found that these opinions lacked "a sound medical basis," when as employer contends the opinions discuss in great detail the bases for their opinions that coal dust exposure and pneumoconiosis did not contribute to the miner's impairment. Employer's Brief at 18. While it is well established that the administrative law judge has the sole power to render credibility determinations and resolve inconsistencies in the evidence, *Meyer v. Zeigler Coal Co.*, 894 F.2d 902, 908, 13 BLR 2-285, 2-292 (7th Cir. 1990); *Rowe*, *supra*; Decision and Order at 14, the absence of an explanation for these determinations precludes the Board from making a meaningful review of the administrative law judge's findings. Accordingly, inasmuch as the administrative law judge's resolution of this issue does not satisfy the requisite standard of clearly setting forth his factual findings, *see Marx v. Director, OWCP*, 870 F.2d 114, 119, 12 BLR 2-199, 2-207 (3d Cir. 1989); *see also Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 21 BLR 2-83 (3d Cir. 1997), we must remand the case for a more complete analysis. *See Director, OWCP v. Congleton*, 743 F.2d 428, 429-430 (6th Cir. 1984).

Employer also argues that the administrative law judge impermissibly accorded greater weight to the opinions of Drs. Baker and Younes inasmuch as Drs. Dahhan and Branscomb have outstanding pulmonary expertise and Dr. Younes' medical qualifications are not contained in the record. A review of the record demonstrates that Dr. Baker's pulmonary expertise is equivalent to that of Drs. Dahhan and Castle inasmuch as all three physicians are Board-certified in both internal medicine and pulmonary diseases. Director's Exhibit 24; Claimant's Exhibit 5; Employer's Exhibit 2. While a physician's medical qualifications are a factor to be considered in determining the probative value of that physician's opinion, the administrative law judge is not required to defer to the physicians with superior qualifications. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). On remand, therefore, the administrative law judge may consider the medical expertise of the physicians in determining the relative persuasiveness of their opinions.

Employer additionally contends that the opinions of Drs. Dahhan, Branscomb and Castle are better reasoned and documented because their opinions are based on a review of the medical records in their entirety, compared to the opinions of Drs. Baker and

Younes, which are each based solely upon one physical examination. Employer's argument relates to the determination as to whether a physician's report is sufficiently documented and reasoned, which is essentially a credibility matter, and as such, it is for the fact-finder to determine, and will be affirmed provided that it is supported by substantial evidence. *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984)(medical report is considered documented if minimally based upon symptomatology, patient history, and physical examination and is considered reasoned if underlying documentation adequately supports physician's conclusions). In addition, it is within the discretion of the administrative law judge to determine whether a medical opinion is more credible because it presents a more complete picture of the miner's health. *See Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986). Accordingly, inasmuch as we are remanding this case for further consideration of the medical opinion evidence, these are factors to be considered when determining the relative weight to assign the physicians' opinions of record. *See Fields*, *supra*; *Stark*, *supra*; *Lucostic*, *supra*.

Finally, employer avers that Dr. Baker's opinion was based on invalid pulmonary function studies, and therefore, the administrative law judge improperly credited his opinion on causation. Employer's argument lacks merit. Pulmonary function studies, while relevant to the presence or absence of a respiratory or pulmonary impairment, are not determinative of the causation of such impairment. *Piniansky v. Director, OWCP*, 7 BLR 1-171, 1-174 (1984).

Accordingly, we vacate the administrative law judge's determination that the medical "evidence *more than likely*" demonstrated that pneumoconiosis contributed to claimant's total disability pursuant to Section 718.204(b) and remand the case for the administrative law judge to reconsider the medical opinion evidence and determine whether the preponderance of the evidence establishes that claimant's disability is due, at least in part, to coal workers' pneumoconiosis. *See Peabody Coal Co. v. Smith*, 127 F.3d 504, 507, 21 BLR 2-180, 2-185 (6th Cir. 1997); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989).

Further, we note that although the onset date has not been challenged, if, in reconsidering the medical opinion evidence, the administrative law judge is able to determine that the medical evidence establishes a date that disability due to pneumoconiosis began, he must award benefits from the beginning of the month the evidence establishes that onset date. 20 C.F.R. §725.503(d). If, however, the administrative law judge again awards benefits and is unable to determine the month of onset of total disability, benefits will commence as of the first day of the month claimant filed his duplicate claim, February 1, 1998. *Shupink v. LTV Steel Co.*, 17 BLR 1-24, 1-30 (1992); *Henning v. Peabody Coal Co.*, 7 BLR 1-753, 1-757 (1985).

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed in part, vacated in part, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge