BRB No. 95-1469 BLA

WILLIAM SALYERS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:
GENERAL TRUCKING CORPORATION	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
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 of Reno E. Bonfanti, Administrative Law Judge, United States Department of Labor.

Lawrence L. Moise, III (Vinyard & Moise), Abingdon, Virginia, for claimant.

Karen Rapaport Esser (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (94-BLA-0476) of Administrative Law Judge Reno E. Bonfanti awarding medical benefits 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). The administrative law judge ordered employer to pay certain bills for prescriptions and physician's office visits, and to reimburse claimant for reasonable travel costs, after finding that employer failed to establish rebuttal of the presumption set forth in *Doris Coal Co. v. Director, OWCP* [*Stiltner*], 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991), *aff'g in part and rev'g in part Stiltner v. Doris Coal Co.*, 14

BLR 1-116 (1990)(*en banc*, with Brown, J. dissenting, and McGranery, J., concurring and dissenting). On appeal, employer contends that the administrative law judge erred in ordering reimbursement for treatment of pulmonary conditions not related to claimant's coal mine employment, and challenges the award of travel costs. Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief.[1]

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).

Claimant was awarded benefits under Part B of the Act, 30 U.S.C. §§921-25, by the Social Security Administration. On April 7, 1978, claimant filed for Medical Benefits Only (MBO) pursuant to Section 11 of the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, §11, 92 Stat. 101 (1978), codified at 30 U.S.C. §924(a), as implemented by 20 C.F.R. §725.701(A) *et seq.* Director's Exhibit 1. Employer agreed on July 27, 1984 that claimant met the standards of total disability under the Act. Director's Exhibit 3. Employer further agreed to accept liability for medical benefits, *id*., and an award of medical benefits was entered by the district director on August 6, 1984. Director's Exhibit 4. Liability for medical benefits was thereby determined, *see Lute v. Split Vein Coal Co.*, 11 BLR 1-82 (1987), and the sole issue on appeal is the propriety of reimbursement for any particular medical or travel charges.

In order to establish entitlement to medical benefits, claimant must establish that his medical expenses were necessary to treat his pneumoconiosis and ancillary pulmonary conditions and disability. *See* 33 U.S.C. §907(a); 20 C.F.R. §725.701(b). The United States Court of Appeals for the Fourth Circuit, wherein appellate jurisdiction of this case arises, has held that when a miner receives treatment for a pulmonary disorder, a presumption arises that the disorder was caused or at least aggravated by the miner's pneumoconiosis, making employer liable for the medical costs. *See Stiltner, supra*. To rebut the presumption, employer may show, by a reasoned medical opinion, either that (1) the expenses in question were not reasonable for the treatment of any of claimant's pulmonary diseases (*i.e.*, a reasoned medical opinion which states that a certain type of treatment is excessive or simply not necessary for the treatment of claimant's pulmonary condition); or (2) the

[1] We affirm as unchallenged on appeal the administrative law judge's finding that invocation of the presumption in *Doris Coal Co. v. Director, OWCP* [*Stiltner*], 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991), *aff'g in part and rev'g in part Stiltner v. Doris Coal Co.*, 14 BLR 1-116 (1990), was established based on the bills and physicians' reports submitted. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

treatment is for a condition completely unrelated to claimant's pulmonary condition (*e.g.*, treatment for a heart condition, broken bone, or bad back). *Seals v. Glen Coal Co*., 19 BLR 1-80, 1-85 n.6 (*en banc*, Brown, J., concurring). Employer may use subsequent proceedings to challenge the necessity of certain medical charges for the treatment of a pneumoconiosis-related disorder or challenge medical expenses not related to pneumoconiosis, but may not require the miner to prove again that he has pneumoconiosis each time he makes a claim for health benefits. *See Stiltner, supra*.

In the instant case, the administrative law judge found claimant entitled to the rebuttable presumption set forth in *Stiltner* that the miner's pulmonary disorder was caused or at least aggravated by his pneumoconiosis. The administrative law judge then further evaluated the medical evidence to determine if employer rebutted the presumption by establishing that the bills submitted were not related to pneumoconiosis.

Employer submitted a series of reports by Dr. Branscomb, who reviewed the submitted charges and the accompanying medical evidence. Dr. Branscomb assumed that claimant has "coal workers' pneumoconiosis," but only as that term is "used in the medical sense." Employer's Exhibit 1 at 9. Dr. Branscomb opined that claimant also has chronic obstructive pulmonary disease due to smoking, which is "entirely separate" from his "coal workers' pneumoconiosis." Employer's Exhibit 1 at 3. Dr. Branscomb stated that claimant's "coal workers' pneumoconiosis" has no effect on his chronic obstructive pulmonary disease because the "medical records fail to show a sufficient quantity and distribution of [coal workers' pneumoconiosis] for one reasonably to attribute his respiratory symptoms to that process. On the contrary, his findings are typical of COPD caused by smoking." *Id*. Dr. Branscomb opined that since all of the treatment was directed at claimant's chronic obstructive pulmonary disease, none of it was related to his asymptomatic "coal workers' pneumoconiosis."

In contrast, Drs. Rogers, Cherry, and Miller, all treating physicians, opined that claimant's pulmonary treatments were directed at clinical problems due to both pneumoconiosis and chronic obstructive pulmonary disease.[2] Dr. Cander reviewed the submitted charges and medical evidence on behalf of the Department of Labor and concluded that the treatment for chronic obstructive pulmonary disease was related to claimant's pneumoconiosis. Director's Exhibit 6.

Contrary to employer's contention, the administrative law judge permissibly accorded diminished weight to Dr. Branscomb's opinion because he found it to be "contrary to the legal finding made earlier in this case that claimant had totally disabling pneumoconiosis which arose out of his coal mine employment." Decision and Order at 7. Employer disclaims any intent to relitigate basic issues of entitlement, Employer's Brief at 14, but the substance of Dr. Branscomb's opinion seems to be that claimant does not have legal pneumoconisosis, which he need not prove again.

[2] Dr. Rogers stated that claimant's chronic obstructive pulmonary disease "is a frequent part of the disease process which we label as 'black lung.'" Claimant's Exhibit 3.

Stiltner, supra. Moreover, the administrative law judge permissibly concluded that the report of Dr. Cander, along with the opinions of Drs. Rogers and Cherry, which were "supported by their status as claimant's treating physician[s]," *see Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Berta v. Peabody Coal Co.*, 16 BLR 1-69 (1992), outweighed Dr. Branscomb's opinion. Decision and Order at 7. Therefore, we reject employer's contentions and affirm the administrative law judge's finding pursuant to Section 725.701(b).

Pursuant to Section 725.701(d) employer contends that the administrative law judge erred in allowing recovery of claimant's travel costs. Employer's Brief at 24. Contrary to employer's contention, substantial evidence supports the administrative law judge's finding that claimant's biannual travel to pulmonary specialists Drs. Rogers and Cherry[3] was reasonable. Claimant testified that he was originally sent to Dr. Rogers because none of the physicians in his area was able to adequately treat his pulmonary condition. Hearing Transcript at 34; *see* 20 C.F.R. §725.703(c). Employer submitted no evidence in response to this testimony. Inasmuch as the administrative law judge's finding is supported by substantial evidence, we reject employer's contention and affirm the administrative law judge's finding pursuant to Section 725.701(d).

Accordingly, the administrative law judge's Decision and Order awarding medical benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

[3] Claimant testified that Dr. Cherry began treating him after Dr. Rogers retired. Hearing Transcript at 27-28.