

BRB No. 88-4248 BLA

GLEN ZEIGENFUSE)
)
 Claimant-Respondent)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Petitioner) DECISION and ORDER

Appeal of the Decision and Order - Award of Benefits of Michael H. Schoenfeld, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Centralia, Pennsylvania, for claimant.

Richard A. Seid (Robert P. Davis, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Jeffrey J. Bernstein, 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: BROWN and DOLDER, Administrative Appeals Judges, and AMERY, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order - Award of Benefits (84-BLA-9490) of Administrative Law Judge Michael H. Schoenfeld 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 reviewed this

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

claim pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with sixteen years of qualifying coal mine employment. The administrative law judge then found the existence of pneumoconiosis, as defined in 20 C.F.R. §718.201, established, based on the parties' agreement and the evidence of record and further found that claimant established total disability due to pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.203 and 718.204. Accordingly, benefits were awarded. The Director appeals, contending that the administrative law judge erred in finding total disability established under 20 C.F.R. §718.204(c). Claimant responds, urging affirmance.¹

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

¹ The administrative law judge's findings under 20 C.F.R. §§718.201, 718.202, 718.203, 718.204(c)(2) and (c)(3), and with regard to length of coal mine employment are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

Turning first to the administrative law judge's consideration of the pulmonary function study evidence of record, we hold that there is no reversible error therein. The administrative law judge rationally accorded greater weight to the most recent pulmonary function study evidence of record. Decision and Order at 5; Claimant's Exhibit 5; see generally Sexton v. Southern Ohio Coal Co., 7 BLR 1-411 (1984); Keen v. Jewell Ridge Coal Corp., 6 BLR 1-454 (1983). The administrative law judge's consideration of the pulmonary function study evidence under Section 718.204(c)(1) is proper and his conclusions reached therefrom are supported by substantial evidence and are hereby affirmed.

Next, the Director contends that the administrative law judge failed to provide an adequate rationale for rejecting the opinion of Dr. Cable and for crediting the opinions of Drs. Weber, Kruk and Kraynak. We disagree. In evaluating the medical opinions under Section 718.204(c), the administrative law judge properly considered the qualifications of the physicians and the underlying bases for their diagnoses, and noted that only Dr. Cable who determined that claimant "is not impaired more than is normal for a man his age, or is at worst minimally impaired despite his pneumoconiosis", could be interpreted as concluding that claimant is not disabled. Decision and Order at 6, 7; Director's Exhibit 19. The Director contends that the administrative law judge erred in rejecting Dr. Cable's opinion solely because the physician did not discuss whether claimant could perform his usual coal mine employment, and asserts that since Dr. Cable essentially concluded that claimant has no impairment attributable to pneumoconiosis, it logically follows that claimant can perform coal mine employment from a respiratory perspective. Director's Brief at 4, 5. Contrary to the Director's argument, the administrative law judge permissibly acted within his discretion in according greater weight to the opinion of Dr. Kraynak, who described claimant's heavy exertional coal mine employment duties in detail and stated that claimant's pneumoconiosis precluded him from performing all but the most sedentary employment. The administrative law judge reasonably found that Dr. Kraynak's opinion was supported by the opinions of Drs. Kruk and Weber and claimant's uncontradicted testimony regarding the exertional requirements of his

usual coal mine employment. See generally Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); Gee v. W.G. Moore and Sons, 9 BLR 1-4 (1986); Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). We further reject the Director's contention that the administrative law judge failed to examine the validity of the medical opinions in light of their evidentiary bases, and failed to determine whether any of the physicians of record provided a reasoned and documented diagnosis of total disability. The administrative law judge specifically considered the objective and subjective factors upon which the physicians relied in formulating their opinions.² Decision and Order at 6, 7. In crediting the opinions of Drs. Kraynak, Kruk and Weber, the administrative law judge found them to be reasoned and documented. See generally Fields, supra. The administrative law judge properly determined, after weighing all contrary probative evidence, that the preponderance of the evidence established total disability due to pneumoconiosis under Section 718.204. Decision and Order at 4, 8; see Fields, supra; Rafferty v. Jones & Laughlin Steel Corp., 9 BLR 1-231 (1987); Shedlock v. Bethlehem Mines Corp., 9 BLR 1-195 (1986); Gee, supra. The administrative law judge's findings and inferences under Section 718.204 are

² Although the Director argues that Drs. Kruk and Kraynak may have relied upon invalid qualifying pulmonary function studies in formulating their professional opinions, we note that the administrative law judge also considered that these studies did not represent claimant's best effort. Decision and Order at 5. Further, the record reflects that Dr. Kraynak reviewed the non-qualifying ventilatory study credited by the administrative law judge, and concluded that the results were supportive of his determination of total disability. See Claimant's Exhibit 12.

supported by substantial evidence and are affirmed. See generally Anderson, supra.

Accordingly, the Decision and Order - Award of Benefits of the administrative law judge is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

ROBERT S. AMERY
Administrative Law Judge