

BRB No. 99-0700 BLA

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| RUSSELL MORGAN |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| NALLY & HAMILTON ENTERPRISES |) | |
| |) | |
| and |) | DATE ISSUED: |
| |) | |
| LIBERTY MUTUAL INSURANCE) |) | |
| COMPANY |) | |
| |) | |
| Employer/Carrier- |) | |
| Respondents |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Deron L. Johnson (Boehl, Stopher & Graves), Prestonsburg, Kentucky, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (97-BLA-1206) of Administrative Law Judge Daniel J. Roketenetz 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 instant claim is a duplicate claim filed on March 28, 1996,¹

¹Claimant filed an initial claim for benefits on May 2, 1984, which was administratively closed on August 20, 1984 for claimant's failure to respond to an Order to

which the administrative law judge properly considered pursuant to the permanent regulations under 20 C.F.R. Part 718. After crediting claimant with twenty-two years of coal mine employment, the administrative law judge considered the new evidence associated with claimant's duplicate claim and found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), and total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant challenges the administrative law judge's findings that the new medical opinion evidence was insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(4) and total disability under Section 718.204(c)(4). Employer responds in support of the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not intend presently to participate in the proceedings on appeal.

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

Show Cause as to why his claim should not be deemed abandoned in light of his failure to submit to authorized medical tests. Director's Exhibit 24. Claimant filed a second, duplicate claim on January 21, 1992. *Id.* In a Decision and Order dated July 20, 1993, Administrative Law Judge Richard K. Malamphy credited claimant with twenty-two years of coal mine employment, and considered the claim on the merits under 20 C.F.R. Part 718. *Id.* Judge Malamphy found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and total disability due to pneumoconiosis under 20 C.F.R. §718.204(c)(1)-(4) and, accordingly, Judge Malamphy denied benefits. *Id.* Claimant appealed. The Board affirmed Judge Malamphy's decision denying benefits. *Morgan v. Nally & Hamilton Enterprises*, BRB No. 93-2336 BLA (Nov. 18, 1994)(unpublished). Claimant took no further action until filing the instant duplicate claim on March 28, 1996. Director's Exhibit 1.

On appeal, claimant contends that the administrative law judge erred in rejecting Dr. Baker's medical opinion under Sections 718.202(a)(4) and 718.204(c)(4). We disagree. Dr. Baker, whose opinion is the only newly submitted medical opinion in this duplicate claim, examined claimant on May 10, 1996. Director's Exhibit 6. Dr. Baker diagnosed claimant with chronic obstructive pulmonary disease and bronchitis, attributing both conditions to cigarette smoking and coal dust exposure. *Id.* Additionally, Dr. Baker characterized claimant's pulmonary impairment as mild. *Id.*

Contrary to claimant's contention, the administrative law judge properly discounted Dr. Baker's opinion that claimant has chronic obstructive pulmonary disease and bronchitis due in part to coal dust exposure on the basis that Dr. Baker failed to provide a rationale for his conclusions, and because the documentation underlying Dr. Baker's opinion did not support his conclusions. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 6; Director's Exhibit 6. Specifically, the administrative law judge noted that Dr. Baker interpreted the x-ray taken during his examination as showing only category 0/1 pneumoconiosis,² indicated that the pulmonary function study he administered reflected a mild obstructive defect, and stated that the arterial blood gas study he conducted was within normal limits. We thus affirm the administrative law judge's finding that the new evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

²An x-ray reading of 0/1 is not considered a positive reading for the existence of pneumoconiosis. See 20 C.F.R. §718.102(b); *Trent v. Director, OWCP*, 11 BLR 1-26; *Canton v. Rochester and Pittsburgh Coal Co.*, 8 BLR 1-475 (1986).

Furthermore, the administrative law judge properly discounted Dr. Baker's opinion under Section 718.204(c)(4) as unreasoned and undocumented upon determining that Dr. Baker did not provide an adequate explanation for his conclusion that claimant has a mild impairment, and because the doctor's conclusion was not supported by the underlying objective evidence, discussed *supra*.³ See *Clark, supra*; *Tackett, supra*; *Fields, supra*. We, therefore, affirm the administrative law judge's finding that the new evidence did not establish total disability pursuant to Section 718.204(c)(4).⁴ Additionally, we affirm, as unchallenged on appeal, the administrative law judge's findings that the new evidence was insufficient to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(3) and total disability under 20 C.F.R. §718.204(c)(1)-(3).⁵ *Skrack Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 5-8. Inasmuch as we affirm the administrative law judge's finding that the new evidence was insufficient to establish the existence of pneumoconiosis under Section 718.202(a) and total disability under Section 718.204(c), we affirm the administrative law judge's denial of benefits. 20 C.F.R. §725.309; *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994).

Accordingly, the administrative law judge's Decision and Order - Denial of benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

³To the extent the administrative law judge erred, as claimant asserts he did, by not comparing the exertional requirements of claimant's last usual coal mine employment as an above-ground loader machine operator to Dr. Baker's finding of a mild impairment, such error would constitute harmless error as the administrative law judge properly discounted Dr. Baker's opinion under 20 C.F.R. §718.204(c)(4), as discussed herein. See *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-1276 (1983); Decision and Order at 8; Director's Exhibit 6; Hearing Tr. at 11-12.

⁴While claimant further contends that the administrative law judge erred in failing to consider claimant's age, education and work experience in determining that he was not totally disabled, those factors are not relevant to establishing total disability pursuant to Section 718.204(c)(4). See 20 C.F.R. §718.204(c)(4); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

⁵We also affirm as unchallenged on appeal the administrative law judge's finding that claimant established twenty-two years of coal mine employment. *Skrack Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3.

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge