BRB No. 03-0676 BLA

BRUCE LYNN RAMEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHIPYARD RIVER COAL TERMINAL	)	DATE ISSUED: 04/29/2004
	)	
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--Denying Benefits of Rudolph L. Jansen, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Lois A. Kitts (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

Timothy S. Williams (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order--Denying Benefits (2002-BLA-5136) of Administrative Law Judge Rudolph L. Jansen rendered on a claim[1] filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as

[1] Claimant filed his application for benefits on February 8, 2001. Director's Exhibit 2.

amended, 30 U.S.C. §901 *et seq*. (the Act).[2] The administrative law judge credited claimant with eighteen years of coal mine employment[3] and found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (a)(4), 718.203(b). The administrative law judge further found, however, that claimant failed to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical opinion evidence relevant to the issue of total disability because he did not accord greatest weight to claimant's treating physician. Employer responds, urging affirmance of the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.[4]

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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[2] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3] The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[4] The administrative law judge's findings that claimant has eighteen years of coal mine employment, that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (a)(4), and that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to Section 718.204(b)(2)(iv), the administrative law judge found that the weight of the medical opinion evidence, represented by the opinions of Drs. Dahhan, Fino and Rasmussen, was insufficient to establish a totally disabling respiratory or pulmonary impairment. Decision and Order at 11. Claimant contends that the opinion of Dr. Sundaram established that he was totally disabled from his usual coal mine work and that the administrative law judge erred in failing to accord greatest weight to the opinion of Dr. Sundaram because he was claimant's treating physician. Claimant's Brief at 2-3.

Contrary to claimant's argument, the administrative law judge is not required to accord greater weight to the opinion of a treating physician based on that status alone. Rather, "the opinion of treating physicians get the deference deserve based on their power to persuade." *Eastover Mining Co. v. Williams*, 338 F.3d 501, 512, 22 BLR 2-625, 2-647 (6th Cir. 2003). Consequently, we reject claimant's argument that the administrative law judge improperly failed to accord greater weight to the opinion of Dr. Sundaram solely because he was claimant's treating physician, when he did not find the opinion to be reasoned. *See* 20 C.F.R. §718.104(d)(5); *Williams*, 338 F.3d 501, 22 BLR 2-625.

In evaluating the medical opinions, the administrative law judge permissibly assigned less probative weight to Dr. Sundaram's opinion, that claimant had a totally disabling respiratory impairment, because it was based, in part, on a pulmonary function study that was subsequently found to be invalid by Dr. Dahhan, a physician with superior credentials. Decision and Order at 10-11; Claimant's Exhibit 1; Employer's Exhibit 3 at 2. This was rational. An administrative law judge may discredit a doctor's opinion regarding the extent of a miner's disability if it is based, in part, upon pulmonary function studies found invalid by a better qualified physician. *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(*en banc*), *rev'd on other grounds* 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113, 1-114 (1988); *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985); *Street v. Consolidation Coal Co.*, 7 BLR 1-65 (1984). As the record establishes that Dr. Dahhan was a Board-certified internist and pulmonologist, while Dr. Sundaram's credentials were not in the record, the administrative law judge properly accorded diminished weight to the opinion of Dr. Sundaram. Decision and Order at 6, 11; Employer's Exhibit 9 at 4; *see Williams*, 338 F.3d 501, 22 BLR 2-625; *Scott*, 14 BLR at 1-40; *Kendrick v. Kentland-Elkhorn Coal Corp.*, 5 BLR 1-730, 733 (1983).

In contrast, the administrative law judge properly credited the opinions of Drs. Dahhan, Fino and Rasmussen, that claimant does not have a totally disabling respiratory impairment, as "well documented and reasoned" because they were based on normal pulmonary function and arterial blood gas studies. Decision and Order at 11; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 n.4 (1993). In addition, the administrative properly credited the opinions of the physicians because they fully considered the strenuous nature of claimant's usual coal mine employment and Drs. Dahhan and Fino further explained that claimant's shortness of breath may be due to his non-coal mine employment related heart disease, rather than pneumoconiosis. Decision and Order at 11; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986); *see also Beatty v. Danri Corp.*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995), *aff'g* 16 BLR 1-11 (1991); *Jewell Smokeless Coal Corp.*, 42 F.2d 241, 19 BLR 2-1 (4th Cir. 1994). Finally, the administrative law judge permissibly credited the opinions of Drs. Dahhan, Fino and Rasmussen based on their superior credentials, *i.e.*, they were pulmonologists, while the credentials of Dr. Sundaram were not in the record. Decision and Order at 6, 11; *Scott*, 14 BLR 1-37 (1990)(*en banc*).

After considering all of the medical evidence of record, the administrative law judge determined that the weight of the narrative reports supported a finding that claimant does not have a totally disabling respiratory or pulmonary impairment, and that the medical opinions were corroborated by the fact that the record contained no valid qualifying pulmonary function studies and no qualifying blood gas studies. Decision and Order at 6, 11. This was a rational decision based on the evidence of record. The administrative law judge properly weighed the evidence as a whole pursuant to Section 718.204(b), and his finding that claimant does not have a totally disabling respiratory or pulmonary impairment is supported by substantial evidence. *Scott*, 14 BLR at 1-41-42; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon*. 9 BLR 1-236 (1987)(*en banc*). As claimant failed to establish that he has a totally disabling respiratory or pulmonary impairment, a requisite element of entitlement, benefits are precluded. *Anderson*, 12 BLR 1-111; *Trent*, 11 BLR 1-26; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry*, 9 BLR 1-1 (1986).

Accordingly, the administrative law judge's Decision and Order--Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge