BRB No. 04-0682 BLA

HILLMAN BOLINSKY	)	
	)	
Claimant- Petitioner	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL CORPORATION	)	DATE ISSUED: 04/20/2005
	)	
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 Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and W. Andrew Delph, Jr. (Wolfe Williams & Rutherford), Norton, Virginia, for claimant.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-5782) of Administrative Law Judge Linda S. Chapman on a subsequent 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 initially credited the parties' stipulation that claimant worked in qualifying coal mine employment for 36.78 years. Adjudicating this subsequent claim[1] pursuant to 20 C.F.R. Part 718, the administrative law

[1] Claimant, Hillman Bolinsky, filed his first application for benefits on March 6, 1980, which the district director denied on February 6, 1981. Director's Exhibit 1. Subsequently,

judge found that the newly submitted evidence established total respiratory disability pursuant to 20 C.F.R. §718.204(b), one of the elements previously adjudicated against claimant, and, therefore, that claimant demonstrated that one of the applicable conditions of entitlement had changed since the date upon which the order denying the prior claim became final pursuant to 20 C.F.R. §725.309(d). Considering the claim on the merits and the evidence of record in its entirety, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and therefore, found that entitlement to benefits was precluded. Accordingly, benefits were denied.

On appeal, claimant argues that the opinions of Drs. Hippensteel and McSharry, who opined that claimant was not totally disabled notwithstanding the qualifying blood gas studies, should be accorded little weight. Claimant also argues that, in weighing the x-ray evidence, the administrative law judge erred in mechanically relying on the numerical superiority of the negative x-ray interpretations to find that the x-ray evidence was insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1). Claimant also generally asserts that his pneumoconiosis arose out of coal mine employment and that it is totally disabling. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating his intention not to 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).

At the outset, we reject claimant's argument that the administrative law judge erred in crediting the opinions of Drs. Hippensteel and McSharry that claimant was not totally disabled. The administrative law judge found that claimant established total respiratory disability based on the newly submitted qualifying blood gas studies, and therefore, found that claimant established a change in an applicable condition of entitlement in this subsequent

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claimant filed additional evidence, which was treated as a petition for modification under 20 C.F.R. §725.310. While the March 1980 claim was pending, however, claimant filed a second application for benefits on August 13, 1982, which was merged into the initial claim. Director's Exhibit 1. Administrative Law Judge Henry W. Sayrs denied benefits in a Decision and Order issued on September 22, 1988, which was affirmed by the Board on November 23, 1990. *Bolinsky v. Clinchfield Coal Co.*, BRB No. 88-3517 BLA (Nov. 23, 1990) (unpub.); Director's Exhibit 1. On August 27, 2001, claimant filed the instant claim for benefits, which is pending herein. Director's Exhibit 3.

claim and considered the claim on the merits. *See* 20 C.F.R. §§718.204(b)(2); 725.309(d); *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

We turn, therefore, to claimant's argument that the administrative law judge erred in not finding the existence of pneumoconiosis established when she considered the claim on the merits, specifically that the administrative law judge erred by mechanically relying on the numerical superiority of the negative x-ray interpretations. We disagree.

Section 718.202(a)(1) provides, in pertinent part, "where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration shall be given to the radiological qualifications of the physicians interpreting such X-rays." 20 C.F.R. §718.202(a)(1). The administrative law judge considered the five newly submitted x-ray films, independently assessing the probative value of each interpretation of each film to determine whether that particular film was positive or negative for the existence of pneumoconiosis. In so doing, the administrative law judge properly considered the radiological expertise of the physicians and accorded dispositive weight to the interpretations of Drs. Wheeler, Scott, Navani, Scatarige, Patel, and Deponte, physicians who possess the dual qualifications of Board-certification in radiology and B-reader status, and accorded less weight to the x-ray interpretation provided by Dr. Forehand, whose radiological expertise is solely that of a B-reader. After comparing the radiological expertise of the different physicians and their respective readings, the administrative law judge concluded that the films dated September 4, 2002 and March 18, 2003 were in equipoise with respect to the existence of pneumoconiosis because both positive and negative readings were provided by dually qualified radiologists. The administrative law judge found the films dated August 2, 2002 and September 15, 2003 to be negative for the existence of pneumoconiosis because the only readings of these films were negative. Regarding the film dated June 24, 2002, the administrative law judge found it to be negative for the existence of pneumoconiosis because the interpretation of Dr. Scott, a dually qualified radiologist, finding the film absent of pneumoconiosis, outweighed the positive interpretation of Dr. Forehand, who was a B-reader only. This was rational. 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 10-11. Hence, contrary to claimant's argument, the administrative law judge did not rely on the numerical superiority of the negative x-ray evidence, but conducted a proper weighing of the conflicting x-ray evidence by evaluating the qualitative and quantitative nature of the interpretations of record and, permissibly found that claimant failed to satisfy his burden of establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(1) by a preponderance of the evidence. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Adkins v.*

Director, OWCP, 958 F.2d at 49, 51-52, 16 BLR 2-61, 2-64-65 (4th Cir. 1992); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986) (administrative law judge's determination to assign relatively less weight to positive x-ray evidence is rational and within discretionary limits set forth in regulations); *Allen v. Union Carbide Corp.*, 8 BLR 1-393, 1-395 (1985).

After reviewing the evidence from the prior claim, the administrative law judge, likewise, determined that it did not establish the existence of the disease. Decision and Order at 14. Consequently, because the administrative law judge rationally relied on the preponderance of the credible x-ray evidence, which she found was negative for the existence of pneumoconiosis, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(1).

Regarding the medical opinion evidence concerning the existence of pneumoconiosis, claimant states that the opinions of Drs. Rasmussen and Forehand found the existence of pneumoconiosis. However, claimant fails to delineate how the administrative law judge erred in her accordance of little weight to the opinions of Drs. Forehand and Rasmussen, the only medical opinions which could, if credited, support a finding of pneumoconiosis under Section 718.202(a)(4) or to brief his allegations in terms of relevant law on the issue. It is well established that a party challenging the administrative law judge's decision must demonstrate with some degree of specificity the manner in which substantial evidence precludes the denial of benefits or why the administrative law judge's determination is contrary to law. *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-49 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Because claimant has not otherwise raised any other allegations of error with respect to the administrative law judge's weighing and analysis of the medical opinion evidence relevant to the existence of pneumoconiosis, we affirm her finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a), a requisite element of entitlement under Part 718. *See Trent*, 11 BLR at 1-27; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we affirm the administrative law judge's determination that entitlement is precluded in this case.

Accordingly, the Decision and Order – Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge