BRB No. 05-0980 BLA

WINDLE SMITH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 04/05/2006
	)	
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 – Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (04-BLA-5583) of Administrative Law Judge Robert L. Hillyard on a claim[1] 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 claimant with nineteen years of qualifying coal mine employment. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a), 718.203(b), and total respiratory disability due to pneumoconiosis pursuant to Section 718.204(b), (c). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find the existence of pneumoconiosis established by x-ray evidence under Section 718.202(a)(1) and total respiratory disability under Section 718.204(b)(2)(iv). Claimant additionally contends that because the administrative law judge discredited the medical opinion of Dr. Simpao, a physician who examined him at the behest of the Department of Labor, the Director, Office of Workers' Compensation Programs, (the Director) failed to provide claimant with a complete and credible pulmonary examination as required by Section 413(b) of the Act, 30 U.S.C. §923(b), to substantiate his claim. In response, employer urges affirmance of the denial of benefits. The Director has filed a response letter addressing arguments contained in claimant's brief, arguing that he satisfied his obligation to provide claimant with a complete, pulmonary evaluation as required by the Act.[2]

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).

Claimant contends that the Director failed to provide him with a complete, credible pulmonary examination sufficient to substantiate his claim. The Director responds, asserting that he is only required to provide claimant with a complete and credible

[1] Claimant, Windle Smith, filed an application for benefits on August 19, 2002. Director's Exhibit 2.

[2] We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(2)-(3), 718.203, 718.204(b)(2)(i)-(iii) because these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 3, 7-8, 9-10.

examination as required by the Act. The Director avers further that the administrative law judge accorded less weight to Dr. Simpao's diagnosis of disabling coal workers' pneumoconiosis because the physician's conclusions were inadequately supported and explained. Consequently, because the administrative law judge attributed less weight to Dr. Simpao's opinion in contrast to finding the opinion not credible, the Director asserts that he did not abdicate his statutory obligation to provide claimant with a complete pulmonary evaluation. The Director's position has merit and we reject claimant's argument.

In assessing the credibility of the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge found that, although Dr. Simpao's opinion diagnosing the presence of pneumoconiosis was based on claimant's symptomotology history, a physical examination, and objective tests, the reliability of this opinion was undermined by Dr. Simpao's reliance on his positive interpretation of a chest x-ray, which was contrary to the administrative law judge's determination that the probative x-ray evidence, *i.e.*, readings rendered by physicians with superior radiological expertise, was negative for the existence of pneumoconiosis. *See Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (*en banc*) (administrative law judge must consider evidence which calls into question reliability of tests upon which physician's opinion is based in determining whether report is documented and reasoned); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); Decision and Order at 9.

In addition, the administrative law judge accorded less weight to the coal workers' pneumoconiosis diagnosis of Dr. Simpao inasmuch as Dr. Simpao failed to explain how the non-qualifying and nearly normal pulmonary function and arterial blood gas studies accompanying his examination were indicative of the existence of pneumoconiosis and failed to discuss how his abnormal findings on physical examination factored into his diagnosis. This was rational. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983) (determination as to whether physician's report is sufficiently reasoned and documented is credibility matter for administrative law judge); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order at 9-10; Director's Exhibit 7.

Although the administrative law judge determined that Dr. Simpao's opinion was entitled to less weight, this determination was not tantamount to a finding that Dr. Simpao's opinion was worthy of no weight, and thus, lacking credibility altogether. Inasmuch as Dr. Simpao clearly rendered an opinion addressing all issues of entitlement, claimant's argument, that he was not provided with a complete, credible pulmonary examination, is rejected. *See Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1992), *alj decision summarily aff'd*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992) (court retained jurisdiction.); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984). Furthermore, because claimant has not otherwise challenged the

administrative law judge's crediting of the opinions of Drs. Broudy and Rosenberg, that claimant does not suffer from pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis based on the medical opinion evidence pursuant to Section 718.202(a)(4).

Claimant argues that, in rendering his finding that claimant was not totally disabled pursuant to Section 718.204(b)(2)(iv), the administrative law judge erred by failing to consider the exertional requirements of claimant's usual coal mine work as a roof bolter and scoop driver in conjunction with the medical reports assessing a disability. Claimant also asserts that the administrative law judge erred by failing to consider his disability, age, limited education, and work experience that would preclude him from obtaining gainful employment outside of the coal mine industry when the administrative law judge determined that claimant was not totally disabled.

In assessing the probative value of the medical opinion evidence pursuant to Section 718.204(b)(2)(iv), the administrative law judge attributed less weight to the opinion of Dr. Simpao, the only physician of record who opined that claimant does not retain the respiratory capacity to perform his usual coal mine employment, because Dr. Simpao failed to explain the discrepancy between his conclusion that claimant was totally disabled and the non-qualifying pulmonary function studies and arterial blood gas studies, failed to provide any diagnostic studies supportive of his conclusions, and failed to discuss how claimant's symptomotology and physical examination findings were demonstrative of total disability. Consequently, the administrative law judge determined that Dr. Simpao's total disability assessment was undermined by the lack of documentation and diagnostic tests to support his conclusions and the absence of an explanation discussing his findings and ultimate conclusions is supported by substantial evidence and is affirmed. This was rational. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986) (*en banc*); *see also Clark*, 12 BLR at 1-155; *King*, 8 BLR at 1-265; *Lucostic*, 8 BLR at 1-46; Decision and Order at 11; Director's Exhibits 7. Contrary to claimant's assertion therefore, consideration of the exertional requirements of his usual coal mine work and other factors affecting his ability to obtain gainful employment was "unnecessary" because the administrative law judge properly found that there was no credible medical opinion evidence of record demonstrating that claimant suffered from a totally disabling respiratory or pulmonary impairment. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172-173, 21 BLR 2-34, 2-45-46 (4th Cir. 1997); Decision and Order at 11. Accordingly, we affirm the administrative law judge's determination that claimant failed to satisfy his burden of demonstrating total respiratory disability pursuant to Section 718.204(b)(2)(iv). *See White v. New White Coal Co., Inc.*, 23 BLR 1-1 (2004); *Fields*, 10 BLR at 1-19; *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83, 1-87 (1988); *Gee*, 9 BLR at 1-4.

In addition, the administrative law judge properly found that the pulmonary function studies of record were non-qualifying, that the arterial blood gas studies of record were non-qualifying, that there was no evidence of cor pulmonale with right-sided congestive heart failure, and that the medical opinion evidence of record was insufficient to demonstrate a totally disabling respiratory or pulmonary impairment. Decision and Order at 10-11. Accordingly, after weighing all the evidence relevant to Section 718.204(b)(2)(i)-(iv), the administrative law judge rationally found that the evidence of record failed to affirmatively establish total respiratory disability. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (*en banc*).

Consequently, because the administrative law judge's determination that claimant failed to affirmatively establish total respiratory disability at Section 718.204(b), a requisite element of entitlement under Part 718, is rational, contains no reversible error, and is supported by substantial evidence, we affirm the administrative law judge's determination that claimant's entitlement to benefits is precluded. *See* 20 C.F.R. §718.204(b)(2); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (*en banc*).[3]

[3] Our affirmance of the administrative law judge's determination that claimant failed to establish total respiratory disability at Section 718.204(b) precludes the need to address claimant's arguments with respect existence of pneumoconiosis under Section 718.202(a). *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (*en banc*).

Accordingly, the Decision and Order – Denial of 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