BRB No. 98-0980 BLA

MORRIS G. MULLINS )
)
Claimant-Petitioner )
)
v. )
)
EASTERN MOUNTAIN CONTRACTORS )
)
and ) DATE ISSUED:
)
BROWNIES CREEK COLLIERIES )
)
Employers-Respondents )
)
DIRECTOR, OFFICE OF WORKERS' )
COMPENSATION PROGRAMS, UNITED )
STATES DEPARTMENT OF LABOR )
)
Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order of George P. Morin, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

S. Parker Boggs (Buttermore, Turner & Boggs, P.S.C.), Harlan, Kentucky, for Eastern Mountain Contractors.

Bonnie Hoskins (Stoll, Keenon & Park, LLP), Lexington, Kentucky, for Brownies Creek Collieries.

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

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-0634) of Administrative Law Judge George P. Morin denying benefits 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). After crediting claimant with ten years of coal mine employment, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also argues that the medical opinion evidence is sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). In separate briefs, Eastern Mountain Contractors and Brownies Creek Collieries respond in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[1]

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

Claimant argues that the x-ray evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). In determining whether the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge properly accorded greater weight to the interpretations rendered by physicians with the dual qualifications of B reader and Board-certified radiologist. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 5. All of the x-ray interpretations rendered by readers with these qualifications are negative for pneumoconiosis. Director's Exhibits 16, 17, 38-41. Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

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[1]Inasmuch as no party challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(2) and (a)(3) and 718.204(c)(1)-(3), these findings are affirmed. *See Skrack v. Island Creek Coal Co.,* 6 BLR 1-710 (1983).

Claimant also contends that the opinions of Drs. Baker and Myers are sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). In considering the opinions of Drs. Baker and Myers pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge properly accorded less weight to their findings of pneumoconiosis because the x-rays that they interpreted as positive for pneumoconiosis were read by more qualified physicians as negative for pneumoconiosis,[2] thus calling into question the reliability of their opinions. *See Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); *White v. Director, OWCP*, 6 BLR 1-368 (1983); Decision and Order at 7; Director's Exhibits 38-42.

The administrative law judge also permissibly found that Dr. Fino's opinion that claimant did not suffer from pneumoconiosis was entitled to additional weight based upon his superior qualifications.[3] *See Dillon v. Peabody Coal Co.*, 11 BLR 1-

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[2]Dr. Baker, whose radiological qualifications are not found in the record, interpreted claimant's January 20, 1993 x-ray as positive for pneumoconiosis. Director's Exhibit 42. Drs. Sargent and Barrett, each dually qualified as a B reader and Board-certified radiologist, interpreted this x-ray as negative for pneumoconiosis. Director's Exhibits 38, 40.

Dr. Myers, whose radiological qualifications are not found in the record, interpreted claimant's April 1, 1993 x-ray as positive for pneumoconiosis. Director's Exhibit 42. Drs. Sargent and Barrett, however, interpreted this x-ray as negative for pneumoconiosis. Director's Exhibits 39, 41.

[3]Dr. Fino is Board-certified in Internal Medicine and Pulmonary Diseases. Employer's Exhibit 1. The qualifications of Drs. Baker and Myers are not found in the record.

113 (1988); Decision and Order at 7; Employer's Exhibit 1. Inasmuch as it is supported by substantial evidence, the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) is affirmed.

Claimant finally argues that Dr. Baker's opinion is sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). The administrative law judge properly noted that Dr. Baker was the only physician to opine that claimant suffered from a totally disabling respiratory impairment. Decision and Order at 9; Director's Exhibit 42. The administrative law judge, however, properly rejected Dr. Baker's opinion of total disability, finding that it was not sufficiently reasoned because the doctor provided no support for his conclusions. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); Decision and Order at 9; Director's Exhibit 42. The administrative law judge also found that Dr. Fino's opinion that claimant did not suffer from a totally disabling respiratory impairment was entitled to additional weight based upon his superior qualifications. *See Dillon*, *supra*; Decision and Order at 9; Employer's Exhibit 1. The administrative law judge also noted that Dr. Fino's opinion regarding the extent of claimant's pulmonary impairment was supported by the opinions of Drs. Dahhan, Vuskovich and Skolnick. Decision and Order at 9; Director's Exhibits 12, 13, 43. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge