BRB No. 99-1208 BLA

OTIS R. DEEL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
YOGI MINING COMPANY, INC.	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher (Wolfe & Farmer), Norton, Virginia, for claimant.

Steven H. Theisen (Midkiff & Hiner, P.C.), Richmond, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (98-BLA-0773) of Administrative Law Judge Pamela Lakes Wood awarding 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). The administrative law judge determined that claimant established twenty-two years of qualifying coal mine employment. Decision and Order at 12. Considering entitlement pursuant to the provisions of 20 C.F.R. Part 718, the administrative law judge concluded that the evidence of record was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b) and that claimant is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c)(4), (b).[1] Decision and Order at 3, 12-17. Accordingly, benefits were awarded

[1]Claimant filed his application for benefits on July 31, 1997. Director's Exhibit 1.

beginning July 1, 1997, the month in which the claim was filed. On appeal, employer contends that the administrative law judge erred in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(4), that claimant is totally disabled pursuant to Section 718.204(c)(4) and that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b). Claimant responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond to this appeal.[2]

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if the findings of fact and the conclusions of law are rational, supported by substantial evidence, and in accordance with the law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

[2]The administrative law judge's length of coal mine employment and onset of disability determinations as well as his findings pursuant to 20 C.F.R. §§718.202(a)(1)-(3), 718.203 and 718.204(c)(1)-(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. Initially, employer's contention that the administrative law judge's Decision and Order fails to comport with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), is without merit.[3] The administrative law judge fully discussed the relevant evidence of record and her reasoning is readily ascertainable from her discussion of the evidence.

[3]The Administrative Procedure Act requires each adjudicatory decision to include a statement of "findings and conclusions, and the reasons or basis therefore, on all material issues of fact, law or discretion presented on the record...." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

Employer further contends that the administrative law judge erred in finding the presence of pneumoconiosis established pursuant to Section 718.202(a)(4) as she impermissibly accorded less weight to Dr. Hippensteel's opinion and greater weight to the opinions of Drs. Robinette and Forehand. We do not find merit in employer's argument. Employer's contention constitutes a request that the Board reweigh the evidence, which is beyond the scope of the Board's powers. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1988). The administrative law judge must determine the credibility of the evidence of record and the weight to be accorded this evidence when deciding whether a party has met its burden of proof. *See Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). In the instant case, the administrative law judge considered the three relevant medical opinions of record and rationally found the opinions of Drs. Robinette and Forehand sufficient to support a finding of pneumoconiosis.[4] *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983); Decision and Order at 14-15; Director's Exhibits 10, 22; Claimant's Exhibit 1; Employer's Exhibit 2. The administrative law judge, in performance of her duty as fact-finder, permissibly accorded determinative weight to the opinions of Drs. Robinette and Forehand as she found them to be better reasoned and documented as they are more consistent with claimant's history and clinical findings. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988)(*en banc*); *Tanner v. Freeman United Coal Co.*, 10 BLR 1-85 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Moreover, in concluding that the opinion of Dr. Hippensteel was outweighed by the preponderance of the medical opinions of record, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Robinette, who is board-certified in internal medicine with a subspecialty in pulmonary disease, on the basis that he was claimant's treating physician and as his conclusions were supported by the opinion of Dr. Forehand, who is board-certified in pediatrics and allergy and immunology, therefore having

[4]Dr. Forehand, who is board-certified in pediatrics and allergy and immunology, concluded that claimant suffers from coal workers' pneumoconiosis due to coal dust exposure and that he was totally and permanently disabled. Director's Exhibit 10. Dr. Robinette, who is claimant's treating physician and is board-certified in internal medicine with a subspecialty in pulmonary disease, opined that claimant probably has both a diaphragmatic paralysis and interstitial lung disease consistent with black lung and that he probably could not return to work as an underground coal miner based upon his pulmonary reserve alone. Claimant's Exhibit 1. Dr. Hippensteel, who is board-certified in internal medicine with a subspecialty in pulmonary disease, opined that claimant does not have coal workers' pneumoconiosis or any occupationally acquired pulmonary condition and that from a pulmonary standpoint he could return to his job in the mines. Director's Exhibit 22; Employer's Exhibit 2.

two areas of specialty in the inquiry. *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Clark, supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *Perry, supra; King, supra*; *King v. Cannelton Industries, Inc.*, 8 BLR 1-146 (1985); *Lucostic, supra*; *Wetzel, supra*; *Massey v. Eastern Associated Coal Corp.*, 7 BLR 1-37 (1984); *Piccin, supra*; Decision and Order at 14-15. Contrary to employer's contention, the administrative law judge may credit the opinion of a treating physician over that of an examining physician as the length of time a physician has treated a miner is an important factor in determining the value of the physician's opinion because of the correlative degree of the physician's familiarity with the patient.[5] *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985). We therefore affirm the administrative law judge's finding that the preponderance of the medical opinion evidence of record is sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *Perry, supra*. As employer makes no other specific challenge to the administrative law judge's findings on the merits, we affirm the administrative law judge's finding that the medical opinion evidence, considered along with the other evidence of record, established the presence of pneumoconiosis pursuant to Section 718.202(a)(4).[6] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR 2- (4th Cir. 2000); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

Employer next contends that the administrative law judge erred in finding that the medical opinion evidence established total disability pursuant to Section 718.204(c)(4). We disagree. The administrative law judge discussed the medical opinions of record and rationally found that the opinions of Drs. Robinette and Forehand were sufficient to meet claimant's burden of proof that claimant suffers from a totally disabling respiratory or pulmonary impairment. Decision and Order at 16-17; Director's Exhibits 10, 22; Employer's

[5]Claimant testified that Dr. Robinette had been his treating physician for over two years. Decision and Order at 3; Hearing Transcript at 31-32.

[6]This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was employed in the coal mine industry in the Commonwealth of Virginia. *See* Director's Exhibit 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Exhibit 2; Claimant's Exhibit 1. The administrative law judge noted Dr. Robinette's status as claimant's treating physician and concluded that the opinions of Drs. Robinette and Forehand were better reasoned and documented in light of claimant's description of the nature of his coal mine work. Decision and Order at 16. Thus the administrative law judge reasonably found that the medical opinion evidence was sufficient to establish total disability pursuant to Section 718.204(c)(4). *Clark, supra*; *Onderko, supra*; *Justice v. Director, OWCP*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Perry, supra*; *Piccin, supra*; Decision and Order at 16. Furthermore, the administrative law judge noted the existence of contrary probative evidence in the record, but permissibly concluded that this evidence did not outweigh the evidence supportive of a total disability finding. *See Clark, supra*; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon. en banc*, 9 BLR 1-236 (1987); Decision and Order at 15-17. Consequently, inasmuch as the administrative law judge permissibly found that the medical opinion evidence of record was sufficient to establish total respiratory disability upon weighing all of the relevant evidence, we affirm the administrative law judge's finding of total disability pursuant to Section 718.204(c). *See Clark, supra*; *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock, supra*; *Gee, supra*.

Employer further asserts that the administrative law judge erred in finding that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b) in that he failed to accord appropriate weight to the opinion of Dr. Hippensteel. Employer contends that the administrative law judge erred in according greater weight to Dr. Robinette's opinion based on the treating physician preference. Contrary to employer's contentions, the administrative law judge permissibly relied on Dr. Robinette's opinion as he is the miner's treating physician and as his opinion was supported by the medical evidence of record. *Onderko, supra*; *Clark, supra*; *Fields, supra*; *King, supra*; *Wetzel, supra*; *Lucostic, supra*; *Revnack, supra*; *Fuller, supra*; *Piccin, supra*; Decision and Order at 17. Additionally, the administrative law judge rationally accorded less weight to the opinion of Dr. Hippensteel, that claimant does not have pneumoconiosis and merely has a nonpulmonary impairment due to obesity, as an administrative law judge may permissibly accord less weight to an opinion regarding causation where it is based on a faulty underlying premise regarding the presence or absence of pneumoconiosis. Decision and Order at 17; *Bobick v. Saginaw Mining Company*, 13 BLR 1-52 (1989); *Trujillo v. Kaiser Steel Corporation*, 8 BLR 1-472 (1986). The administrative law judge is empowered to weigh the medical opinion evidence of record and to draw her own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark, supra*; *Anderson, supra*; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's finding that the medical opinions of record establish causation pursuant to Section 718.204(b) and the award of benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge