

BRB No. 03-0129 BLA

EUGENE JOHNSON)
)
 Claimant-Petitioner)
)
 v.)
)
 NLF, INCORPORATED)
)
 Employer)
)
 SIMPSON MINING COMPANY,)
 INCORPORATED) DATE ISSUED: _____
)
 Employer)
)
 GATLIFF COAL COMPANY)
)
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS=)
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
) DECISION and ORDER
 Party-in-Interest

Appeal of the Decision and Order B Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Sidney B. Douglass (Douglass Law Office), Harlan, Kentucky, for claimant.

W. M. Cox, Jr., Williamsburg, Kentucky, for Gatliff Coal Company.

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

PER CURIAM:

Claimant appeals the Decision and Order B Denial of Benefits (2001-BLA-0978) of

Administrative Law Judge Robert L. Hillyard 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).¹ The administrative law judge credited claimant with twenty years and four months of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on claimant=s December 26, 1995 filing date. Initially, the administrative law judge found that Gatliff Coal Company (employer) was the responsible operator and, therefore, dismissed the other named operators, NLF, Incorporated and Simpson Mining Company. Addressing the merits of entitlement, the administrative law judge found the medical evidence of record insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(1)-(4). In addition, the administrative law judge found the medical evidence of record insufficient 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 challenges the administrative law judge=s denial of benefits, arguing that the administrative law judge erred in failing to accord proper weight to the medical opinions of Drs. Baker and Watts, claimant=s treating physicians. In response, employer urges affirmance of the administrative law judge=s denial of benefits, as supported by substantial evidence. The Director, Office of Workers= Compensation Programs, has

¹ 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.

filed a letter stating that he will not file a response brief in this appeal.²

The Board=s scope of review is defined by statute. The administrative law judge=s Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable 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 pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. ' ' 718.3, 718.202, 718.203, 718.204; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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 Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. In challenging the administrative law judge=s denial of benefits, claimant argues that the administrative law judge erred in failing to accord proper weight to the opinions of Drs. Baker and Watts, based on their status as claimant=s treating physicians. We disagree.

² The parties do not challenge the administrative law judge=s decision to credit claimant with twenty years and four months of coal mine employment, his finding that Gatliff Coal Company is the responsible operator and the subsequent dismissal of NLF, Incorporated and Simpson Mining Company, or the administrative law judge=s findings pursuant to 20 C.F.R. ' ' 718.202(a)(1)-(3) and 718.204(b)(2)(i)-(iii). These findings are therefore affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In considering the medical opinion evidence, the administrative law judge accorded greater weight to the consultative opinions of Drs. Fino and Westerfield, as well as the reports of examining physicians, Drs. Broudy, Dineen, Jarboe and Vuskovich, which opined that claimant was not suffering from pneumoconiosis, because he found them better documented and reasoned, than the opinions of Drs. Baker, Watts and Smiddy, which he found to be lacking in documentation and analysis.³ Decision and Order at 20-22. This was rational. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Furthermore, contrary to claimant=s contentions, the administrative law judge is not required to accord more weight to the opinions of Drs. Baker and Watts, solely because they are claimant=s treating physicians, when their opinions are unreasoned. Decision and Order at 20-22; *Jericol Mining, Inc. v. Napier*, 301 F.3d 703 (6th Cir. 2002); *Wolfe Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Onderko v.*

³ In weighing the medical opinion of Dr. Baker, the administrative law judge found that the record contains treatment notes from Dr. Baker dated between February 15, 2001 and November 19, 2001. However, the administrative law judge found Dr. Baker=s opinion to be not well reasoned or documented because Dr. Baker gave no basis for his diagnosis of pneumoconiosis other than a positive chest x-ray and a pulmonary function study, which the administrative law judge found did not indicate the existence of pneumoconiosis. Decision and Order at 21; Director=s Exhibits 73, 74; Claimant=s Exhibits 1-3. The administrative law judge found that Dr. Watts stated that he treated claimant between February 1999 and December 2000. Decision and Order at 21. However, the administrative law judge found that the Aonly known basis@ for Dr. Watt=s diagnosis of legal pneumoconiosis was a pulmonary function study, and therefore concluded that his opinions was not well reasoned or documented. *Id.*; Director=s Exhibit 75.

Director, OWCP, 14 BLR 1-2 (1989); *see also* 20 C.F.R. ' 718.104(d); *Eastover Mining Co. v. Williams*, 2003 WL 21756342 (6th Cir. 2003). As claimant does not otherwise challenge, with specificity, the administrative law judge=s weighing of the medical opinion evidence, we affirm his finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Decision and Order at 22; *see Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Thus, the administrative law judge rationally found the evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a).

Since claimant has not established the existence of pneumoconiosis pursuant to Section 718.202(a), a necessary element of entitlement under Part 718, an award of benefits is precluded. *Hill*, 123 F.3d 412, 21 BLR 2-192; *Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

Accordingly, the administrative law judge's Decision and Order B Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge