BRB No. 05-0255 BLA

PAUL JONES	)	
	)	
Claimant-Petitioner	)	
v.	)	
	)	
MOUNTAIN CLAY, INCORPORATED	)	DATE ISSUED: 08/30/2005
	)	
and	)	
	)	
JAMES RIVER COAL COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer/carrier.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor, Donald S. Shire, 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 – Denying Benefits (2003-BLA-6080) of Administrative Law Judge Rudolf L. Jansen 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 found that the newly submitted evidence failed to establish the existence of pneumoconiosis or total disability, elements of entitlement previously adjudicated against claimant, and was, therefore, insufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Accordingly, the administrative law judge denied benefits on this subsequent claim.

On appeal, claimant contends that the administrative law judge erred in finding that the newly submitted x-ray evidence and medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and (4). Claimant also contends that the administrative law judge erred in finding that the newly submitted medical opinion evidence failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs is not participating in this appeal.[1]

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 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 & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant first contends that the administrative law judge erred in failing to find that the newly submitted x-ray evidence established the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Specifically, claimant asserts that the administrative law judge improperly relied on the negative x-ray readings by physicians with superior credentials and the numerical superiority of the negative x-ray readings to find that the x-ray evidence did not establish the existence of pneumoconiosis.

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[1] The administrative law judge's findings that the evidence fails to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(3) and that the evidence fails to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Contrary to claimant's contention, in weighing the conflicting x-ray evidence, the administrative law judge properly conducted a qualitative and quantitative analysis of the newly submitted x-ray evidence by according greater weight to the negative readings of better qualified physicians and the numerical superiority of the negative readings. 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk and Western Railway Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). In addition, we reject claimant's contention that the administrative law judge "may" have "selectively analyzed" the x-ray evidence. Claimant's Brief at 3. Claimant cites nothing in the record to support this speculation, and a review of the evidence together with the administrative law judge's Decision and Order fails to reveal a selective analysis of the x-ray evidence. *See White v. New White Coal Co.*, 23 BLR 1-1, 1-5 (2004). We affirm, therefore, the administrative law judge's finding that the newly submitted x-ray evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(1).

Claimant next contends that the administrative law judge erred in finding that the newly submitted medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) based upon the reports of Drs. Baker and Simpao. Claimant specifically asserts that the administrative law judge erred in rejecting Dr Baker's diagnoses of coal workers' pneumoconiosis and chronic bronchitis since Dr. Baker's diagnoses were based on a physical examination, medical and work histories, a pulmonary function study, and an arterial blood gas study, in addition to a chest x-ray, and was, therefore, a reasoned and documented opinion.

In considering the newly submitted medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge found that Drs. Baker and Simpao[2] opined that claimant suffered from pneumoconiosis, while Drs. Rosenberg and Broudy opined that claimant did not have pneumoconiosis. Decision and Order at 10-11; Director's Exhibits 9, 14, 22; Employer's Exhibit 11. Contrary to claimant's contention, the administrative law

[2] Claimant asserts that Dr. Simpao opined that claimant has pneumoconiosis, but does not challenge or make specific allegations regarding the administrative law judge's consideration of Dr. Simpao's opinion. Claimant's Brief at 3. Because claimant does not challenge the administrative law judge consideration of Dr. Simpao's opinion pursuant to Section 718.202(a)(4), we affirm the administrative law judge's determination to accord Dr. Simpao's opinion less weight at Section 718.202(a)(4). *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); *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

judge properly accorded less weight to Dr. Baker's opinion because he found Dr. Baker's diagnosis of pneumoconiosis to be based solely on a positive chest x-ray and a history of coal dust exposure and Dr. Baker's diagnosis of chronic bronchitis to be insufficient to establish legal pneumoconiosis as Dr. Baker did not assign an etiology to this diagnosis. 20 C.F.R. §718.201; *Eastover Mining Co. v. Williams*, 338 F.2d 501, 22 BLR 2-625 (6th Cir. 2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). Turning to the opinions of Drs. Simpao, Broudy, and Rosenberg. The administrative law judge accorded little weight to Dr. Broudy's opinion diagnosing chronic bronchitis because Dr. Broudy did not address its etiology. The administrative law judge concluded that although both Drs. Simpao and Rosenberg, pulmonary specialists, provided well-reasoned and well-documented opinions, Dr. Rosenberg's opinion was entitled to greater weight because it was more detailed and thorough, and because it represented a more complete analysis of claimant's health, *i.e.*, Dr. Rosenberg, unlike Dr. Simpao, not only examined claimant but had the opportunity to review the evidence of record. This was rational. Decision and Order at 11; *Clark*, 12 BLR at 1-155; *Lucostic v. Director, OWCP*, 8 BLR at 1-46 (1983). Accordingly, we reject claimant's contention regarding the administrative law judge's analysis of the medical opinion evidence at Section 718.202(a)(4) and we affirm the administrative law judge's finding that the newly submitted evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Finally, claimant contends that the administrative law judge erred in finding that the newly submitted medical opinion evidence failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv) based on the opinion of Drs. Baker and Simpao. Claimant asserts that Dr. Baker's opinion establishes total respiratory disability because Dr. Baker found, based on the Guides to the Evaluation of Permanent Impairment, that claimant had a Class I breathing impairment and was, therefore, 100% occupationally disabled for work in the coal mine industry or similar dusty occupations. Claimant further asserts that the opinion of Dr. Simpao establishes total respiratory disability because Dr. Simpao found that claimant did not have the respiratory capacity to perform the work of a coal miner or to perform comparable work in a dust free environment based on objective findings on x-ray along with symptomatology and physical findings. Claimant contends therefore that taking into consideration the fact that claimant's usual coal mine employment, including being an equipment oiler on the mine site, involved heavy exposure to concentrations of coal dust on a daily basis, it was rational to conclude that claimant's condition prevented him from engaging in his usual coal mine employment which occurred in a dusty environment and involved exposure to dust on a daily basis. Claimant's Brief at 8; Director's Exhibit 11.

The administrative law judge rejected Dr Baker's opinion that claimant had a 0-10% impairment of the whole person, but should avoid further coal dust exposure because he found it insufficient to establish total disability. This was proper. *Zimmerman v. Director,*

OWCP, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83, 1-88 (1988); *Defore v. Alabama By-Products Corp.*, 12 BLR 1-27, 1-29 (1988). The administrative law judge rejected Dr. Simpao's opinion because Dr. Simpao did not explain his disability finding in light of his designation of the impairment as mild and his finding that tests resulted in normal values. This was permissible. *See Clark*, 12 BLR at 1-155; *Lucostic*, 8 BLR 1-46; *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291, 1-1294 (1984). We affirm, therefore, the administrative law judge's rejection of the opinions of Drs. Baker and Simpao. The administrative law judge properly accorded determinative weight to the contrary opinions of Drs. Broudy and Rosenberg, which he found to be better documented and reasoned. *See White*, 23 BLR 1-1; *Clark*, 12 BLR at 1-155; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon en banc*, 9 BLR 1-236 (1987); *Lucostic*, 8 BLR 1-46.

Moreover, contrary to claimant's contentions, an administrative law judge is not required to consider claimant's age, education, and work experience in determining whether claimant has established that he is totally disabled from his usual coal mine employment. *See White*, 23 BLR at 1-6; *Taylor*, 12 BLR 1-83. Nor, contrary to claimant's assertion does a finding of total disability necessarily follow from a diagnosis of pneumoconiosis. *See White*, 23 BLR at 1-6. We reject, therefore, claimant's contentions, and we affirm the administrative law judge's finding that the newly submitted evidence fails to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). Because we affirm the administrative law judge's finding that the new evidence has not established either the existence of pneumoconiosis or total disability, elements previously adjudicated against claimant, we affirm the administrative law judge's finding that the new evidence fails to establish a change in an applicable condition of entitlement pursuant to Section 725.309(d), and thereby, affirm his denial of benefits on the instant, subsequent claim. 20 C.F.R. §725.309(d); *see Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge