BRB No. 05-0275 BLA

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| CAROLYN TESSNER<br>(Widow of JACKIE T. TESSNER)<br><br>Claimant-Petitioner<br><br>v.<br><br>GLENN'S TRUCKING COMPANY<br><br>and<br><br>INSURANCE COMPANY OF NORTH AMERICA<br><br>Employer/Carrier-Respondents<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | DATE ISSUED: 08/10/2005<br><br>DECISION and ORDER |

Appeal of the Decision and Order – Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

Philip J. Reverman, Jr. (Boehl, Stopher and Graves), Louisville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-5622) of

Administrative Law Judge Joseph E. Kane on a survivor's 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 the parties' stipulation that the miner worked in qualifying coal mine employment for nine and three-quarter years. 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 pursuant to 20 C.F.R. §718.202(a) or that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(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 the medical opinion evidence pursuant to Section 718.202(a)(4) and in failing to find that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Claimant also contends that the administrative law judge erred in failing to accord substantial weight to the medical opinion of Dr. Sandlin based on his status as the miner's treating physician. Employer/carrier has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, is not participating in this appeal.[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).

In challenging the administrative law judge's determination pursuant to Section 718.202(a)(4), claimant argues that the administrative law judge erred in failing to credit the

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[1] Claimant, Carolyn Tessner, is the widow of the miner, Jackie T. Tessner, who died on November 4, 1999. Director's Exhibit 12. The miner filed a claim for benefits on December 4, 1992, which was finally denied by Administrative Law Judge Frank Marden on September 5, 1996, because the existence of pneumoconiosis was not established. Director's Exhibit 1. Subsequent to the miner's death, claimant filed a survivor's claim for benefits on January 24, 2001, which is the subject of the instant appeal. Director's Exhibit 3.

[2] We affirm the administrative law judge's findings with respect to length of coal mine employment, and the failure to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3) since 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.

medical opinion of Dr. Sandlin, who diagnosed the presence of pneumoconiosis. Claimant contends that Dr. Sandlin's opinion is well reasoned and well documented opinion because it is based on multiple medical examinations of the miner in addition to abnormal chest x-rays and pulmonary function studies. Claimant additionally contends, pursuant to Section 718.104(d), that the administrative law judge erred in failing to accord determinative weight to the opinion of Dr. Sandlin based on his status as the miner's treating physician.[3]

Contrary to claimant's argument, however, the administrative law judge did not err in according less weight to the opinion of Dr. Sandlin, despite his status as the miner's treating physician. In assessing the credibility of Dr. Sandlin's opinion as to whether the miner had pneumoconiosis, the administrative law judge accorded less weight to Dr. Sandlin's opinion, a one-paragraph letter dated December 6, 2002, because the doctor failed to specify the objective evidence he relied on to diagnose the existence of pneumoconiosis, other than to state that he knew that the miner had had an x-ray that was consistent with coal workers' pneumoconiosis and had had some abnormal pulmonary function studies. Additionally, the administrative law judge found the probative value of Dr. Sandlin's opinion to be diminished, because Dr. Sandlin stated that he was unsure whether he had made the initial diagnosis of pneumoconiosis or the miner had come to him with that diagnosis. Accordingly, the administrative law judge's finding that Dr. Sandlin's opinion was not well-reasoned and was therefore entitled to little weight was rational. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-648-49 (6th Cir. 2003)(doctor's opinion merely restating an x-ray finding is not reasoned); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003) (administrative law judge as fact finder should decide whether physician's report is sufficiently reasoned and documented); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 8. Further, the administrative law judge considered

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[3] Section 718.104(d)(5) provides in pertinent part that:

> [i]n appropriate cases, the relationship between the miner and his treating physician may constitute substantial evidence in support of the adjudication officer's decision to give that physician's opinion controlling weight, provided that the weight given to the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation….

20 C.F.R. §718.104(d)(5).

Dr. Sandlin's status as the miner's treating physician, noting that Dr. Sandlin opined that the miner had had problems with his breathing from 1992, when Dr. Sandlin first treated the miner, until his death in 1999. The administrative law judge noted, however, that Dr. Sandlin was only a general practitioner, not Board-certified in any specialty, and had, in fact, referred the miner to Dr. Sundaram, a pulmonary specialist. Decision and Order at 5; Claimant's Exhibit 3; *see* Employer's Exhibit 4. Accordingly, the administrative law judge properly found that the opinion of Dr. Sandlin, even though he was the miner's treating physician, was undermined because it was neither well reasoned nor well documented, and it was not, therefore, entitled to determinative weight based on his status as the miner's treating physician. 20 C.F.R. §718.104(d)(5); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003) (noting that Section 718.104(d) does not call for automatic acceptance of treating physician's opinion); *Williams*, 338 F.3d at 510-511, 22 BLR at 2-641-642; *Groves*, 277 F.3d at 834, 22 BLR at 2-326. Hence, we affirm the administrative law judge's determination to accord diminished weight to the opinion of Dr. Sandlin, the only physician of record who diagnosed the existence of pneumoconiosis.

Because claimant has not otherwise challenged the administrative law judge's credibility determinations, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as this finding is rational, contains no reversible error, and is supported by substantial evidence. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Because claimant has failed to satisfy her burden of establishing the existence of pneumoconiosis, a requisite element of entitlement under Part 718, we affirm the administrative law judge's finding that entitlement to benefits is precluded.[4] *See* 20 C.F.R. §718.202(a); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (*en banc*).

[4] Claimant's failure to affirmatively establish the existence of pneumoconiosis, a requisite element of entitlement, obviates the need to address her argument regarding whether pneumoconiosis was a substantially contributing cause of the miner's death at Section 718.205(c)(2). *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993); *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Accordingly, the Decision and Order – Denying 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