BRB No. 07-0139 BLA

J.M.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VESTA MINING COMPANY	)	
	)	DATE ISSUED: 08/28/2007
Employer-Respondent	)	
	)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

James M. Poerio (Tucker Arensberg, P.C.), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (2005-BLA-5841) of Administrative Law Judge Daniel L. Leland rendered 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). Claimant filed a claim for benefits on April 12, 2004. Director's Exhibit 2. The administrative law judge credited claimant with twelve years of coal mine employment, and found that he was totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, however, also found that the evidence was insufficient to

establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in rejecting the medical opinions of Drs. Setty and Begley. Claimant specifically asserts that the administrative law judge's decision fails to comply with the requirements of 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).[1] Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief.[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.[3] 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 under 20 C.F.R. Part 718, claimant must prove, by a preponderance of the evidence, that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that he is totally disabled due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

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[1] Under the terms of the Administrative Procedure Act, each adjudicatory decision must include a statement of "the findings and conclusions, and the reasons or basis therefor, 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).

[2] We affirm the administrative law judge's finding of twelve years of coal mine employment, his finding that claimant is totally disabled, and his finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), as those findings are unchallenged by the parties on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

Claimant asserts that the administrative law judge's analysis of the medical opinion evidence under Section 718.202(a)(4) fails to comport with the APA because he does not explain the basis for his credibility determinations. We disagree. Contrary to claimant's contention, in weighing the conflicting evidence, the administrative law judge specifically explained that he assigned Dr. Setty's opinion, that claimant has a restrictive pulmonary disease due to coal dust exposure, less weight because the doctor failed to explain how the objective evidence supported his diagnosis: "Dr. Setty does not state how he determined that the miner's pulmonary disease was due to his coal mine employment." Decision and Order at 6; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge also stated that he assigned less probative weight to Dr. Begley's diagnosis of chronic bronchitis and coal workers' pneumoconiosis since the doctor specifically cited, as a basis for his diagnosis, his own positive interpretation of claimant's x-ray dated December 13, 2005. Decision and Order at 6. As noted by the administrative law judge, however, the December 13, 2005 x-ray was re-read as negative for pneumoconiosis by Dr. Wiot, a more qualified Board-certified radiologist and B-reader. *See Arnoni v. Director, OWCP*, 6 BLR 1-427 (1983); *White v. Director, OWCP*, 6 BLR 1-368 (1983); Decision and Order at 6. In contrast, the administrative law judge found that Drs. Fino and Renn offered documented and reasoned opinions that claimant did not suffer from either clinical or legal pneumoconiosis. *See Clark*, 12 BLR at 1-151.

It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986), and to assess the evidence of record and draw his own conclusions and inferences therefrom, *see Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v Cannelton Industries, Inc.*, 12 BLR 1-190 (1989), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge when his findings are rational and supported by substantial evidence, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Because the administrative law judge explained the basis for his credibility determinations in accordance with the APA, we affirm his finding that claimant failed to establish the existence of pneumoconiosis based on the medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4). Because claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement, *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2, benefits are precluded.

Accordingly, the Decision and Order – Denying Benefits of the administrative law judge 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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BETTY JEAN HALL
Administrative Appeals Judge