BRB No. 04-0350 BLA

BARRY L. HENDERSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
FLORENCE MINING COMPANY	)	
	)	DATE ISSUED: 12/07/2004
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 - Awarding Benefits of Michael L. Lesniak, Administrative Law Judge, United States Department of Labor.

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

George H. Thompson (Thompson, Calkins & Sutter), Pittsburgh, Pennsylvania, for employer.

Helen H. Cox (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: SMITH, McGRANERY, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (03-BLA-5301) of Administrative Law Judge Michael L. Lesniak rendered on a 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). In the Decision and Order - Awarding Benefits, the administrative law judge credited claimant with "at least" sixteen years of coal mine employment[2] pursuant to the parties' stipulation. Decision and Order at 3. The administrative law judge found that although a preponderance of the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), the weight of the medical opinion evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b). The administrative law judge additionally found that claimant is totally disabled by a respiratory or pulmonary impairment that is due to pneumoconiosis pursuant to 20 C.F.R. §§718.204(b)(2), 718.204(c)(1). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in his analysis of the medical opinion evidence when he found that claimant established the existence of pneumoconiosis. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, arguing in a footnote that if the Board remands this case, the administrative law judge should determine whether the parties complied with the evidentiary limitations on x-ray evidence set forth at 20 C.F.R. §725.414.[3]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence,

---

[1] Claimant filed his application for benefits on January 26, 2001. Director's Exhibit 2. The district director denied benefits and claimant requested a hearing, Director's Exhibits 25, 26, which was held before the administrative law judge on June 24, 2003.

[2] The record indicates that claimant's coal mine employment occurred in Pennsylvania. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established the presence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

The administrative law judge considered readings of four x-rays[4] and the medical opinions of three physicians. Dr. Pickerill, who is Board-certified in Internal Medicine and Pulmonary Disease, opined that claimant's chest x-ray is negative for coal workers' pneumoconiosis and that he suffers from chronic obstructive bronchial asthma unrelated to his coal mine employment. Employer's Exhibits 1, 2. Dr. Malhotra, whose credentials are not of record, opined that although claimant's chest x-ray is negative, he suffers from industrial bronchitis due to coal dust exposure. Director's Exhibit 9 at 4. Dr. Schaaf, who is Board-certified in Internal Medicine and Pulmonary Disease, opined that claimant's x-ray is positive for clinical pneumoconiosis and that he has chronic bronchitis due to coal dust exposure. Director's Exhibit 10; Claimant's Exhibit 1.

The administrative law judge found that, notwithstanding negative chest x-rays, claimant established the existence of pneumoconiosis by reasoned medical opinions. The administrative law judge concluded that while Dr. Pickerill's opinion was documented and reasoned, Dr. Schaaf more convincingly explained that claimant's symptoms of cough and wheezing with pulmonary obstruction and restriction were not due to asthma, but instead "ar[ose] from coal-dust exposure (legal pneumoconiosis)." Decision and Order at 11. The administrative law judge additionally found that Dr. Schaaf's diagnosis of coal dust-related chronic bronchitis was corroborated by Dr. Malhotra's diagnosis of industrial bronchitis due to coal dust exposure.

Pursuant to 20 C.F.R. §718.202(a)(4), employer contends that Dr. Schaaf's opinion is unreasoned and thus could not be relied upon by the administrative law judge. Contrary to employer's contention, the administrative law judge was within his discretion to find Dr. Schaaf's opinion diagnosing legal pneumoconiosis "particularly well-reasoned, well-documented and convincing." Decision and Order 11; *see Kertesz v. Crescent Hills Coal Co*., 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986). In so

[4] The administrative law judge also considered two CT scan readings along with the conventional chest x-rays. Decision and Order at 4-5; Director's Exhibit 15.

finding, the administrative law judge thoroughly reviewed the physicians' reports and extensive deposition testimony. Decision and Order at 6-12. After doing so, the administrative law judge permissibly indicated that he was persuaded by Dr. Schaaf's opinion because Dr. Schaaf more convincingly explained how his diagnosis was supported by claimant's coal dust exposure history, symptoms, pulmonary function abnormalities, and reduced diffusing capacity. *See Kertesz*, 788 F.2d at 163, 9 BLR at 2-8; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1985)(*en banc*). Additionally, the administrative law judge acted within his discretion as the fact-finder when he determined that Dr. Malhotra's opinion corroborated that of Dr. Schaaf. *See Kertesz*, 788 F.2d at 163, 9 BLR at 2-8.

Employer insists that "the only well-documented, well-reasoned opinion in this case is that of Dr. Pickerill . . . ." Employer's Brief at 15. The Board, however, may not analyze the credibility of medical opinions or substitute its inferences for those of the administrative law judge. *Mays v. Piney Mountain Coal Co.*, 21 BLR 1-59, 1-64 (1997)(Dolder, J., concurring and dissenting), *aff'd*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999). Because substantial evidence supports the administrative law judge's permissible credibility determination, *see Kertesz*, 788 F.2d at 163, 9 BLR at 2-8, we affirm his finding at 20 C.F.R. §718.202(a)(4) that claimant established the existence of legal pneumoconiosis by a preponderance of the evidence.

To the extent employer argues that the administrative law judge failed to compare the negative weight of the chest x-rays with the medical opinions diagnosing legal pneumoconiosis,[5] *see* 20 C.F.R. §802.211(b), we hold that the administrative law judge committed no reversible error in this case. The administrative law judge recognized that claimant had to establish the existence of pneumoconiosis "notwithstanding negative x-rays . . . ." Decision and Order at 6. The administrative law judge specifically found that claimant did so by establishing the existence of legal pneumoconiosis in the form of chronic or industrial bronchitis arising from coal dust exposure. *See* 20 C.F.R. §718.201; *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 315, 20 BLR 2-76, 2-90 (3d Cir. 1995)(recognizing that legal pneumoconiosis "is defined more broadly than the medical (clinical) definition of pneumoconiosis"). In this context, the administrative law judge's finding that all the evidence "taken together" established the existence of legal pneumoconiosis, Decision and Order at 12, is consistent with the decision of the United States Court of Appeals for the Third Circuit in *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997).

[5] Employer states that Dr. Schaaf's diagnosis of *clinical* pneumoconiosis by x-ray is not well reasoned in light of the administrative law judge's finding that the x-ray evidence did not establish the existence of pneumoconiosis. Employer's Brief at 10-11.

Pursuant to 20 C.F.R. §718.204(c)(1), employer raises no specific challenge to the administrative law judge's finding that Dr. Schaaf's opinion outweighed that of Dr. Pickerill to establish that pneumoconiosis is a substantially contributing cause of claimant's totally disabling respiratory or pulmonary impairment. Decision and Order at 15. We therefore affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.204(c)(1). *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Consequently, we affirm the administrative law judge's award of benefits. In light of our disposition of this case, we need not address the Director's argument concerning the administrative law judge's application of 20 C.F.R. §725.414.

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is affirmed.

SO ORDERED.

_____

ROY P. SMITH
Administrative Appeals Judge

_____

REGINA C. McGRANERY
Administrative Appeals Judge

_____

JUDITH S. BOGGS
Administrative Appeals Judge