BRB No. 99-0435 BLA

RONALD MEADE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
U.S. STEEL MINING COMPANY, INCORPORATED	)	DATE ISSUED:
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	)	
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 of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Ronald Meade, Switzer, West Virginia, *pro se*.

Howard G. Salisbury, Jr. (Kay, Casto & Chaney, PLLC), Charleston, West Virginia, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (98-BLA-0355) of Administrative Law Judge Daniel F. Sutton denying benefits in 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). The administrative law judge, based on the parties' stipulation, credited claimant with six years of coal mine employment, Decision and Order at 5, and adjudicated this duplicate claim[1] pursuant to the regulations contained in 20 C.F.R. Part 718. The

[1]Claimant filed his first claim for benefits on October 3, 1975. Director's

administrative law judge found the newly submitted evidence insufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1)-(4) and 718.203(c) and insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4) as well as total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Consequently, the

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Exhibit 35. On June 14, 1981, Administrative Law Judge George P. Morin issued a Decision and Order denying benefits based on claimant's failure to establish the existence of pneumoconiosis and total disability due to pneumoconiosis. *Id*. The Board affirmed Judge Morin's denial of benefits. *Meade v. United States Steel Corp.*, BRB No. 81-1627 BLA (Sept. 18, 1984)(unpub.). Inasmuch as claimant did not pursue this claim any further, the denial became final. Claimant filed his second claim for benefits on November 30, 1990. Director's Exhibit 34. On July 19, 1993, Administrative Law Judge Reno E. Bonfanti issued a Decision and Order denying benefits based on claimant's failure to establish a material change in conditions. *Id*. Judge Bonfanti found that claimant failed to establish any of the elements of entitlement. *Id*. The Board affirmed Judge Bonfanti's denial of benefits. *Meade v. United States Steel Mining Co.*, BRB No. 93-2160 BLA (Jan. 24, 1995)(unpub.). Because claimant did not pursue this claim any further, the denial became final. Claimant filed his third claim for benefits on February 26, 1996. Director's Exhibit 33. However, on June 20, 1996, claimant filed a request to withdraw his claim for benefits, which a Department of Labor district director approved. *Id*. Claimant filed his most recent claim for benefits on April 14, 1997. Director's Exhibit 1.

administrative law judge concluded that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond to this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP,* 9 BLR 1-36 (1986). 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. 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).

To establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis arising out of coal mine employment and total respiratory disability due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *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*). Failure to establish any one of these elements precludes entitlement. Further, in order to have a duplicate claim fully adjudicated on the merits, pursuant to 20 C.F.R. §725.309(d), the newly submitted evidence must be sufficient to establish a material change in conditions; that is, the evidence must establish at least one of the elements of entitlement previously adjudicated against claimant. *Lisa Lee Mines v. Director, OWCP*, [*Rutter*] 57 F.3d 402 (1995), *aff'd* 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc)*. In the instant case, the administrative law judge correctly stated that the previous claim for benefits was denied because "the evidence did not establish any of the requisite elements of entitlement." Decision and Order at 4-5.

Initially, the administrative law judge found the newly submitted evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). The administrative law judge considered the relevant newly submitted x-ray evidence of record, which consists of four interpretations of two x-rays.[2] The

[2]The administrative law judge stated that "[i]n addition to these interpretations,

administrative law judge stated that "[a]ll four of the physicians who specifically read the new chest x-rays for the presence of pneumoconiosis are certified B-readers and one, Dr. Cole, is additionally qualified as a [B]oard-certified radiologist[]." Decision and Order at 8. The administrative law judge properly accorded greater weight to the newly submitted negative x-ray readings based on his finding that "there is an even 2-2 split of opinion between these experts, and...the most qualified radiologist, Dr. Cole, found no evidence of pneumoconiosis."[3] *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994). Since the administrative law judge rationally found that claimant did not establish the presence of pneumoconiosis by a preponderance of the new evidence, we hold that substantial evidence supports the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). *See Director, OWCP v. Greenwich Collieries [Ondecko],* 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

Next, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) since there is "[n]o biopsy evidence of pneumoconiosis." Decision and Order at 6. Further, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3) since none of the presumptions set forth therein is applicable to the instant claim. *See* 20 C.F.R. §§718.304, 718.305, 718.306. The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Similarly, claimant is not entitled to the presumption at 20 C.F.R. §718.305 because the miner filed his claim after January 1,

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the Claimant submitted records from the Charleston Area Medical Center which contain reports of several chest x-rays which were taken during 1998 in connection with the Claimant's hospitalization for evaluation of his left lung mass and coronary artery bypass surgery." Decision and Order at 7. The administrative law judge found that "[n]one of these x-rays were classified for the presence of pneumoconiosis under the I.L.O. system, and none of the reports mention findings of abnormalities consistent with pneumoconiosis." *Id*.

[3]The x-ray taken on June 27, 1997 was read as positive for pneumoconiosis, 1/0, by Drs. Gaziano and Ranavaya, B-readers. Director's Exhibits 12, 14. The same x-ray was read as negative for pneumoconiosis by Dr. Cole, a B-reader and a Board-certified radiologist. Director's Exhibit 13. The x-ray taken on October 29, 1997 was read as negative for pneumoconiosis by Dr. Castle, a B-reader. Employer's Exhibit 1.

1982. *See* 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, this claim is not a survivor's claim; therefore, the presumption at 20 C.F.R. §718.306 is also inapplicable.

The administrative law judge also found the newly submitted evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Whereas Dr. Ranavaya opined that claimant suffers from pneumoconiosis, Director's Exhibit 10, Dr. Castle opined that claimant does not suffer from pneumoconiosis, Employer's Exhibit 1.[4] The administrative law judge properly accorded greater weight to the opinion of Dr. Castle than to the contrary opinion of Dr. Ranavaya because of Dr. Castle's superior qualifications.[5] *See Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge also properly accorded greater weight to the opinion of Dr. Castle than to the contrary opinion of Dr. Ranavaya because he found Dr. Castle's opinion to be better reasoned and supported by the objective evidence.[6] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR

[4]Dr. Racadag was claimant's attending physician during one of claimant's hospitalizations. Dr. Racadag performed a lung biopsy which showed malignant cells consistent with squamous cell carcinoma. Claimant's Exhibit 1 at 25-27. Dr. Chapman, who performed bypass surgery on claimant and biopsied one of claimant's lymph nodes, diagnosed "metastic bronchogenic carcinoma." Claimant's Exhibit 1 at 30-37.

[5]The administrative law judge stated that "Dr. Castle possess[es] superior qualifications as a [B]oard-certified specialist in internal medicine and pulmonary disease." Decision and Order at 10. The record does not contain the credentials of Dr. Ranavaya.

[6]The administrative law judge found that Dr. Castle's report was "better reasoned and supported by the objective medical evidence." Decision and Order at 10. The administrative law judge stated that Dr. Castle "provided a detailed explanation of how this objective data supported a diagnosis of pulmonary emphysema and bronchogenic carcinoma caused by the Claimant's significant and continuing cigarette smoking instead of pneumoconiosis or any other respiratory or pulmonary condition arising out of occupational coal mine dust exposure." *Id*. Further, the administrative law judge found that Dr. Castle's finding of no pneumoconiosis was consistent with hospital records showing bronchogenic carcinoma, with no showing of a respiratory/pulmonary condition arising out of coal mine employment "despite multiple biopsy studies and exploratory lung surgery." *Id*. at 11. In contrast, the administrative law judge stated that "Dr. Ranavaya's report contains no analysis of the objective medical data." *Id*. at 10-11. The

1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Therefore, we hold that substantial evidence supports the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

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administrative law judge also stated that Dr. Ranavaya made a diagnosis of pneumoconiosis based solely on claimant's coal mine employment history and a positive x-ray, without considering claimant's extensive smoking history. *Id*. The administrative law judge acknowledged that while an x-ray and coal mine employment history may be a sufficient basis upon which to diagnose the presence of pneumoconiosis, he nonetheless accorded greater weight to Dr. Castle's report because Dr. Castle specifically identifies the studies upon which he relied and the conclusion he reached was consistent with the underlying objective evidence of record. *Id*.

In addition, the administrative law judge found the newly submitted evidence insufficient to establish that claimant's pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(c). Whereas Dr. Ranavaya opined that claimant's pneumoconiosis is related to coal mine employment, Director's Exhibit 10, Dr. Castle opined that claimant's pulmonary emphysema and bronchogenic carcinoma are not related to coal mine employment, Employer's Exhibit 1. The administrative law judge permissibly discounted the opinion of Dr. Ranavaya because he found it not to be reasoned.[7] *See Clark, supra*; *Fields, supra*; *Fuller, supra*. As previously noted, the administrative law judge credited claimant with six years of coal mine employment. The pertinent regulation provides that "[i]f a miner who is suffering or suffered from pneumoconiosis was employed less than ten years in the nation's coal mines, it shall be determined that such pneumoconiosis arose out of that employment only if competent evidence establishes such a relationship." 20 C.F.R. §718.203(c). Thus, inasmuch as the administrative law judge permissibly discounted the only medical opinion of record that could support a finding that claimant's pneumoconiosis arose out of coal mine employment, we hold that substantial evidence supports the administrative law judge's finding that the newly submitted evidence is insufficient to establish that claimant's pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(c). *See Clark, supra*; *Fields, supra*; *Fuller, supra*.

[7]The administrative law judge stated that Dr. Ranavaya failed "to explain his conclusion or even discuss the role played by the Claimant's cigarette smoking in the development of his respiratory condition." Decision and Order at 12.

With regard to 20 C.F.R. §718.204(c), the administrative law judge found the newly submitted evidence insufficient to establish total disability. In finding the newly submitted evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(1), the administrative law judge considered the two newly submitted pulmonary function studies dated June 27, 1997 and October 29, 1997. The administrative law judge stated that "Drs. Ranavaya and Castle both had the Claimant undergo pulmonary function...studies, but none of these studies produced results which qualify[8] for a finding of total disability under the criteria set forth in [S]ection 718.204(c)(1) and Appendix B for pulmonary function studies." Decision and Order at 13. However, the record indicates that while the October 29, 1997 pulmonary function study, which was provided by Dr. Castle, yielded non-qualifying post-bronchodilator values, it yielded qualifying pre-bronchodilator values. Employer's Exhibit 1. Moreover, the June 27, 1997 pulmonary function study provided by Dr. Ranavaya yielded qualifying values. Director's Exhibit 8. Thus, inasmuch as the administrative law judge mischaracterized the newly submitted pulmonary function study evidence, we vacate the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(1) and remand the case for further consideration of the newly submitted evidence. *See Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985).

However, inasmuch as none of the newly submitted arterial blood gas studies of record yielded qualifying values, Director's Exhibit 11; Employer's Exhibit 1, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(2). We also affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(3) since there is no evidence of cor pulmonale with right sided congestive heart failure.

[8]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

Additionally, the administrative law judge found the newly submitted evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). While Dr. Castle opined that claimant does not suffer from a totally disabling respiratory impairment, Employer's Exhibit 1, Dr. Ranavaya opined that claimant suffers from a totally disabling respiratory impairment, Director's Exhibit 10. The administrative law judge properly accorded greater weight to the opinion of Dr. Castle than to the contrary opinion of Dr. Ranavaya because he found Dr. Castle's opinion to be better reasoned.[9] *See Clark, supra*; *Fields, supra*; *Fuller, supra*. Thus, we affirm the

[9]The administrative law judge stated that "the only medical opinion that the Claimant has a respiratory or pulmonary impairment which satisfies the requirements of [S]ection 718.204(c)(4) is the **cursory** statement from Dr. Ranavaya that the Claimant has a moderate pulmonary impairment which would prevent him from performing his usual or last coal mine job." Decision and Order at 13 (emphasis added). The administrative law judge also stated that "[t]his conclusion is countered by Dr. Castle's statement that the pulmonary function study results demonstrated that the Claimant retains the respiratory capacity to perform the duties of his usual coal mine employment." *Id*. The administrative law judge observed that "[a]lthough Dr. Castle did not provide an explanation for this conclusion that is nearly as detailed as his discussion of the medical evidence bearing on the presence of pneumoconiosis, he did draw a distinction between the Claimant's moderate airway obstruction, as demonstrated in the pulmonary function study, and his grave and totally disabling condition as a result of coronary artery disease, bronchogenic

administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(4).

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carcinoma and back pain." *Id*. Hence, the administrative law judge found that "Dr. Castle's opinion, like the rest of his report, is better reasoned than Dr. Ranavaya's, and it is additionally supported by Dr. D'Brot's finding that stress testing showed a normal ventilatory response to exercise." *Id*.

Finally, the administrative law judge found the newly submitted evidence insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). The administrative law judge considered the newly submitted opinions of Drs. Castle and Ranavaya. Whereas Dr. Ranavaya opined that claimant suffers from a totally disabling respiratory impairment due to pneumoconiosis, Director's Exhibit 10, Dr. Castle opined that claimant does not suffer from a totally disabling respiratory impairment due to pneumoconiosis,[10] Employer's Exhibit 1. The administrative law judge permissibly discounted the opinion of Dr. Ranavaya because he found that "Dr. Ranavaya's complete failure to discuss the contributory role played by the Claimant's substantial cigarette smoking history seriously undermines the credibility of his opinion on the cause(s) of the Claimant's total disability."[11] Decision and Order at 13; *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993)*; Stark v. Director, OWCP,* 9 BLR 1-36 (1986); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985). Therefore, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b).

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[10]Dr. Castle opined that claimant "does retain the respiratory capacity to perform his usual coal mining employment duties." Employer's Exhibit 1. However, Dr. Castle opined that claimant "may be disabled as a whole man because of coronary artery disease, and possible bronchogenic carcinoma, as well as low back pain syndrome." *Id*. Dr. Castle further opined that "[t]hese are all diseases of the general public at large, however, and are unrelated to coal mining employment and coal dust exposure." *Id*.

[11]Although Dr. Ranavaya "noted that the Claimant had smoked one and one half packages of cigarettes per day since age 7," Decision and Order at 8, Dr. Ranavaya did not consider claimant's smoking history with regard to his finding that claimant suffers from a totally disabling respiratory impairment due to pneumoconiosis, Director's Exhibit 10. In contrast, Dr. Castle stated that claimant "has a heroic history of tobacco abuse and has at least a 75-pack-year history of smoking and was currently smoking at the time of my examination." Employer's Exhibit 1. Dr. Castle opined that claimant "does have evidence of tobacco smoke induced pulmonary emphysema of at least a moderate degree," and that claimant "very likely may have a bronchogenic carcinoma related to his ongoing tobacco smoking habit." *Id*. Further, Dr. Castle opined that "[n]either of these diseases...is related in any way to coal workers' pneumoconiosis or coal mining employment." *Id*. Moreover, Dr. Castle stated that "[w]ith appropriate treatment and smoking cessation[,]...[claimant] may improve even more than he is at the present time." *Id*.

If, on remand, the administrative law judge finds that the newly submitted evidence is sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1), he must then weigh all of the relevant newly submitted evidence together, both like and unlike, to determine whether claimant has established total disability pursuant to 20 C.F.R. §718.204(c), *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon. en banc*, 9 BLR 1-236 (1987), thereby establishing a material change in conditions pursuant to 20 C.F.R. §725.309.

Should the administrative law judge, on remand, find that the newly submitted evidence is sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309, he must consider claimant's 1997 claim on the merits. *See Rutter, supra.*

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge