BRB No. 01-0646 BLA

WILFORD G. WATKINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SOUTHERN OHIO COAL COMPANY	)	DATE ISSUED:
	)	
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 of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Wilford G. Watkins, Maidsville, West Virginia, *pro se*.

Douglas G. Lee (Steptoe & Johnson), Charleston, West Virginia, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (00-BLA-0292) of Administrative Law Judge Michael P. Lesniak awarding benefits 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).[1] In this duplicate claim, the administrative law judge found that a material change in conditions was established inasmuch as claimant had failed to establish any of the elements of entitlement in his prior claim, and the parties now stipulated to the

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

existence of pneumoconiosis. The administrative law judge also found, and the parties stipulated, that claimant's pneumoconiosis arose out of coal mine employment. Additionally, the administrative law judge found that a totally disabling respiratory impairment due to pneumoconiosis was established pursuant to 20 C.F.R. §718.204(b)(1)-(4), (c)(2000). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding that claimant's total disability was due to pneumoconiosis. Neither claimant, nor the Director, Office of Workers' Compensation Programs (the Director), has responded to the merits of this appeal.

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 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 pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Employer argues that the administrative law judge erred in finding that claimant's occupational pneumoconiosis was a contributing cause of his total disability. Specifically, employer argues that Dr. Fino's opinion, that claimant would have been totally disabled even if he had never set foot in the coal mines, should have been accorded determinative weight because Dr. Fino's opinion was based on a complete review of all of claimant's medical records. The administrative law judge accorded less weight to the opinion of Dr. Fino, that claimant's total disability was entirely due to smoking, because he found that it was not well-reasoned. This was proper. Specifically, the administrative law judge found Dr. Fino's conclusion, that claimant's total disability was entirely due to his smoking and not at all to claimant's thirty-nine years of underground coal mine employment, to be unpersuasive in light of the radiographic evidence of pneumoconiosis and Dr. Fino's attempt to "minimize any connection between obstructive defects and coal dust exposure." Decision and Order at 15; *see Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *see also Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986). In addition, the administrative law judge reasonably accorded less weight to Dr. Fino's opinion because he found it unsupported by underlying documentation. *See Clark, supra*.

Employer next argues that because Dr. Abrahams's opinion on etiology was equivocal, the administrative law judge erred in according it greater weight. We disagree. Dr. Abrahams testified that there was no way to factor out the contribution to impairment from cigarette smoking as opposed to coal mine employment, Claimant's Exhibit 3 at 16, and that claimant's pulmonary impairment and subsequent disability were due to the combined effect of years of coal dust exposure and cigarette smoking and that a significant percentage of claimant's impairment is still related to coal dust exposure. Decision and Order at 15; Claimant's Exhibit 3 at 17, 19, 23-24. The administrative law judge found that Dr. Abrahams's opinion was well-reasoned, supported by objective diagnostic studies, findings on physical examination, claimant's extensive history of underground coal mine employment and significant smoking history. Decision and Order at 15. This was reasonable. *See Clark, supra*; *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986); *Stark, supra*.

Finally, employer argues that the administrative law judge erred in crediting Dr. Jaworski's opinion, that claimant's totally disabling respiratory impairment was due to both smoking and coal dust exposure, and in according less weight to Dr. Renn's opinion, that claimant's disability was due to smoking. The administrative law judge accorded less weight to Dr. Renn's opinion because it failed to discuss whether any or all of claimant's various respiratory impairments contributed to his disability. This was rational. Decision and Order at 14; Employer's Exhibit 2; *see Clark, supra*; *Stark, supra*. Conversely, the administrative law judge credited Dr. Jaworski's opinion that both coal dust exposure and smoking contributed to claimant's impairment because he found this opinion, like that of Dr. Abrahams, to be better reasoned and documented as well as better supported by the objective diagnostic testing of record. Decision and Order at 15-16; Director's Exhibit 11; *see Clark, supra*; *Minnich, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Accordingly, the administrative law judge's finding on causation is affirmed. 20 C.F.R. §718.204(c).

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge