BRB No. 04-0686 BLA

HENRY YOUNG, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BLEDSOE COAL CORPORATION	)	
	)	DATE ISSUED: 02/28/2005
and	)	
	)	
JAMES RIVER COAL COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, 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: DOLDER, Chief Administrative Appeals Judge, SMITH, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (02-BLA-5203) of Administrative Law Judge Joseph E. Kane 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] The administrative law judge accepted employer's concession and credited claimant with twenty-three years of coal mine employment. The administrative law judge determined that the evidence of record was insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total respiratory disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

Claimant argues on appeal that the administrative law judge did not properly weigh the evidence relevant to Sections 718.202(a)(1), (a)(4) and 718.204(b)(2)(iv). Claimant also maintains that remand to the district director is required, as he did not receive a complete, credible pulmonary evaluation as is required pursuant to 20 C.F.R. §725.406. Employer has responded and urges affirmance of the denial of benefits. Employer further asserts that if the case is remanded for another pulmonary evaluation, it must be dismissed as the responsible operator. The Director, Office of Workers' Compensation (the Director), has also responded and contends that remand for a complete pulmonary evaluation is not warranted in this case.[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 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 & 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 establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any

[1] Claimant filed an application for benefits on October 1, 1998. Director's Exhibit 1. He was later permitted to withdraw this claim. Claimant subsequently filed an application for benefits on June 14, 2002. Director's Exhibit 3.

[2] We affirm the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1)-(3) and 718.204(b)(2)(i)-(iii), as they are unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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*).

Regarding the issue of total disability pursuant to Section 718.204(b)(iv), claimant argues that Dr. Baker's opinion, that claimant was "100% occupationally disabled," is well reasoned and documented, and is sufficient for "invoking the presumption of total disability." Claimant's Brief at 7. Claimant asserts that in addition to claimant's work history, Dr. Baker based his opinion on claimant's medical history, x-rays, physical examination, pulmonary function and blood gas studies. *Id.* Claimant also contends that the administrative law judge made no mention of claimant's usual coal mine work in conjunction with Drs. Baker and Hussain's opinions of total disability. Citing *Bentley v. Director, OWCP*, 7 BLR 1-612 (1984), claimant notes that the administrative law judge did not mention claimant's age or work experience in conjunction with his assessment that claimant was not totally disabled. Claimant also suggests that the administrative law judge erred in according less weight to the opinions of Drs. Hussain and Baker because they relied upon nonconforming and/or nonqualifying objective studies.

Claimant's contentions are without merit. In considering the medical opinion evidence, the administrative law judge acknowledged Dr. Baker's status as claimant's treating physician, and that his opinion recorded claimant's occupational and smoking histories and the results of claimant's physical examination, x-ray, pulmonary function and blood gas studies. Decision and Order-Denying Benefits at 6-7; Director's Exhibits 15, 17. The administrative law judge's finding that Dr. Baker did not identify a totally disabling respiratory or pulmonary impairment is rational and supported by substantial evidence, however, as Dr. Baker did not state that claimant is incapable, from a respiratory or pulmonary standpoint, of performing coal mine work. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). Furthermore, the administrative law judge rationally found Dr. Baker's statement that claimant "should limit further exposure" to coal dust and that "such a limitation would 'imply'" total disability, is not equivalent to a finding of total disability.[3] Decision and Order – Denying Benefits at 14;

[3] Dr. Baker opined:

> Patient has a second impairment based on Section 5.8, Page 106, Chapter Five, Guides to the Evaluation of Permanent Impairment, Fifth Edition, which states that persons who develop pneumoconiosis should limit further exposure to the offending agent. This would imply the patient is 100% occupationally disabled for work in the coal mining industry or similar dusty occupations.

Director's Exhibit 15.

Director's Exhibit 15; *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988).

Similarly, the administrative law judge reasonably found that the opinion of Dr. Hussain, who examined claimant at the request of the Department of Labor, is insufficient to establish total disability. Dr. Hussain diagnosed a moderate pulmonary impairment, but further indicated that claimant retains the respiratory capacity to perform his usual coal mine work. Decision and Order – Denying Benefits at 7, 14; Director's Exhibit 14; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000).

We also find no merit in claimant's assertion that the administrative law judge erred by not comparing the exertional requirements of claimant's coal mine employment with the physicians' assessments of claimant's physical limitations. The administrative law judge is not required to engage in this analysis where a physician details a claimant's physical limitations, but does not provide an opinion regarding the extent of any disability from which the claimant suffers. *See Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc); see also Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986). Herein, the administrative law judge rationally found that the medical opinions of record do not contain a reasoned and documented diagnosis of total respiratory disability. Moreover, claimant's assertion of vocational disability based on his age and limited education and work experience does not support a finding of total respiratory or pulmonary disability compensable under the Act.[4] *See* 20 C.F.R. §718.204; *Carson v. Westmoreland Coal* Co., 19 BLR 1-18 (1994).

Because claimant has not raised any meritorious allegations of error with respect to the administrative law judge's finding that the evidence of record is insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv), we affirm this finding. In light of this determination, we also reject claimant's assertion that this case must be remanded to the district director because Dr. Hussain's opinion was discredited by the administrative law judge pursuant to Section 718.202(a)(4). With respect to the issue of total disability, the administrative law judge did not find that Dr. Hussain's opinion was incomplete or lacking credibility. Rather, he rationally determined that because Dr. Hussain explicitly indicated that claimant is able to perform coal mine work, his opinion

[4] Claimant's reliance on *Bentley v. Director, OWCP*, 7 BLR 1-612 (1982), is misplaced. In *Bentley*, the Board held that age, work experience and education are only relevant to claimant's ability to perform comparable and gainful work, an issue which did not need to be reached in that case in light of the administrative law judge's finding, at 20 C.F.R. §410.426(a), that claimant did not establish that he had any impairment which disabled him from his usual coal mine employment. *See also* 20 C.F.R. §718.204(b)(1), (b)(2).

did not support a finding of total respiratory disability under Section 718.204(b)(2)(iv). Thus, Dr. Hussain's opinion on the element of entitlement upon which the administrative law judge based the denial of benefits was complete and credible and remand to the district director is not required. 20 C.F.R. §725.406(a); *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); *accord Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 1166, 7 BLR 2-25, 2-31 (8th Cir. 1984).

Because we have affirmed the administrative law judge's finding that claimant has not established total disability pursuant to Section 718.204(b)(2), an essential element of entitlement, error, if any, in the administrative law judge's weighing of the evidence relevant to the existence of pneumoconiosis under Section 718.202(a)(1) and (a)(4) is harmless. *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). We will not, therefore, address claimant's arguments pertaining to these findings.

Accordingly, the administrative law judge's Decision and Order-Denying Benefits 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