BRB No. 05-0775 BLA

CHARLES E. SMITH (deceased)	)	
	)	
Claimant-Petitioner	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	DATE ISSUED: 02/27/2006
	)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Wendle D. Cook (Cook & Cook), Madison, West Virginia, for claimant.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor; 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 (2003-BLA-5113) of Administrative Law Judge Richard A. Morgan (the administrative law judge) 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). The administrative law judge found that the parties stipulated to a coal mine employment history of thirty-three years, that claimant

acknowledged a forty-five year smoking history, beginning in 1945, and that the pulmonary function study, blood gas study, and medical opinion evidence established a totally disabling respiratory impairment, 20 C.F.R. §718.204(b)(2)(i), (ii), (iv), but that the evidence was insufficient to establish the existence of either clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or total disability due to pneumoconiosis (disability causation) pursuant to 20 C.F.R. §718.204(c).[1] Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence failed to establish the existence of pneumoconiosis or disability causation. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a response brief.[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 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*).

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[1] Claimant filed the instant claim with the Department of Labor on July 24, 2001. Director's Exhibit 1. Claimant died on August 8, 2004. Hearing Transcript at 7, 21. Claimant's counsel is pursuing the claim as representative of one or more of claimant's surviving children. Hearing Transcript at 7-8.

[2] The administrative law judge's finding that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3) and that Dr. Zalvidar's opinion was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant first contends that the administrative law judge erred in crediting Dr. Crisalli's opinion that claimant did not have clinical or legal pneumoconiosis. Director's Exhibit 29; Employer's Exhibit 8.[3] Specifically, claimant contends that the administrative law judge should not have accorded determinative weight to Dr. Crisalli's opinion as it was not based on all the evidence and was, in fact, based on an incorrect understanding of the x-ray interpretations of record. Claimant contends that Dr. Crisalli's opinion is suspect because he found that claimant's x-rays did not establish evidence of occupational pneumoconiosis when, in fact, Dr. Robert Smith read an x-ray as being "consistent with occupational pneumoconiosis" and demonstrating "pleural abnormalities consistent with pneumoconiosis." Employer's Exhibit 8.

Considering the x-ray evidence at Section 718.202(a)(1), the administrative law judge found that while Dr. Smith, a B-reader, interpreted the x-ray, dated June 24, 2002, as showing "no parenchymal abnormalities consistent with pneumoconiosis, but showing pleural abnormalities consistent with pneumoconiosis, the x-ray could not establish the existence of coal workers' pneumoconiosis because the doctor did not classify the x-ray in accordance with Section 718.102(b). In considering the x-ray evidence, the administrative law judge further found that while one x-ray of record was read and classified positive for pneumoconiosis (1/2) by Dr. Ranavaya, a B-reader, this x-ray was subsequently read negative for pneumoconiosis by Dr. Wiot, a dually qualified, Board-certified, B-reader. The administrative law judge also found that Dr. Wiot reread Dr. Smith's x-ray as negative for pneumoconiosis. Accordingly, the administrative law judge concluded that the x-ray evidence failed to establish the existence of clinical pneumoconiosis.

In considering the opinion of Dr. Crisalli, the administrative law judge found that Dr. Crisalli opined that there is insufficient objective evidence to justify a diagnosis of pneumoconiosis, and that claimant's impairment and disability are wholly unrelated to pneumoconiosis or occupational exposure to coal dust. Decision and Order at 11; Director's

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[3] Claimant also contends that a diagnosis of pneumoconiosis was made by The West Virginia State Pneumoconiosis Board 1981 determination that claimant is entitled to receive state benefits based upon their findings that claimant has pneumoconiosis and a resultant 10% impairment. Director's Exhibit 7. The administrative law judge properly accorded this determination "little weight" because the underlying medical evidence was not in evidence and the evidence referenced by the State Board pre-dated the medical evidence in the instant record by about twenty years. Decision and Order at 4; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1984)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985).

Exhibit 29; Employer's Exhibit 8. The administrative law judge found Dr. Crisalli's opinion to be well-reasoned and well documented and most consistent with the credible objective evidence, including the preponderance of the x-ray evidence which was negative for pneumoconiosis. This was proper. Dr. Crisalli opined that claimant's impairment was due to tuberculosis, not pneumoconiosis or occupational dust exposure. Contrary to claimant's argument, Dr. Crisalli did review claimant's medical evidence and his opinion is buttressed by the negative x-ray evidence of record. This was proper. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

Claimant next contends that the administrative law judge should have credited the opinion of Dr. Ranavaya as a reasoned and documented opinion. Turning to Dr. Ranavaya's opinion, the administrative law judge rationally discounted Dr. Ranavaya's opinion regarding the existence of clinical pneumoconiosis because he found it to be based solely upon Dr. Ranavaya's positive x-ray and claimant's lengthy coal mine employment history. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998). Moreover the administrative law judge permissibly discounted Dr. Ranavaya's opinion of clinical pneumoconiosis because it was based on a positive x-ray which was reread by Dr. Wiot, a better qualified reader, as negative. Decision and Order at 5, 10-11; *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). Accordingly, we reject claimant's contention and we affirm the administrative law judge's determination that Dr. Ranavaya's opinion finding the existence of clinical pneumoconiosis was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4). Further, the administrative law judge properly found that Dr. Ranavaya's opinion did not establish the existence of legal pneumoconiosis, because, while diagnosing the existence of clinical pneumoconiosis based on x-ray and history, Dr. Ranavaya diagnosed tuberculosis and hypertension but did not specify the causes of these diseases. Decision and Order at 7; Director's Exhibit 10, Sec. D 7; 20 C.F.R. §718.201.

We affirm, therefore, the administrative law judge's finding that the evidence failed to establish the existence of either clinical or legal pneumoconiosis. Because the administrative law judge found that the evidence fails to establish the existence of pneumoconiosis, an essential element of entitlement, we need not reach claimant's argument regarding disability causation. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

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