BRB No. 98-0695 BLA

LARRY A. DYKES)
)
Claimant-Petitioner)
)
v.)
)
CALVARY COAL COMPANY,) DATE ISSUED:
INCORPORATED)
)
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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order (97-BLA-1413) of Administrative Law Judge Thomas F. Phalen, Jr. denying 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). The administrative law judge found that claimant established twenty-five years of coal mine employment, and the existence of coal workers' pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1), (4), and 718.203(b). The administrative law judge further found however, that claimant had failed to establish the existence of a totally disabling respiratory impairment pursuant

[1] Claimant is the miner, Larry A. Dykes, who filed his application for benefits on August 29, 1994, which was denied by the district director on March 27, 1995. Director's Exhibits 1, 19, 28.

to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant argues that the administrative law judge erred by failing to credit the reports of Dr. Baker, and by failing to consider the physical requirements of claimant's usual coal mine employment, or claimant's age, education and work experience. Employer, and the Director, Office of Workers' Compensation Programs, as party-in-interest, have not participated in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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 Part 718, claimant must establish total respiratory disability due to pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Failure to prove any of these elements precludes entitlement. *Trent*, *supra*; *Perry*, *supra*.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and there is no reversible error contained therein. Pursuant to Section 718.204(c)(4), the administrative law judge determined that claimant did not present substantial evidence to establish that he was totally disabled. He gave diminished weight to Dr. Baker's September 1993 report which indicated only that claimant should have no further exposure to coal or rock dust, and that claimant "may" have difficulty performing sustained manual labor on a full time basis. Dr. Baker's December 1994 report was also given diminished weight because Dr. Baker indicated that claimant had only a minimal respiratory impairment based on his non-qualifying objective test results.[2] The administrative law judge rationally gave less weight to both of these opinions as poorly reasoned because they were not supported by qualifying studies. Most significantly, the administrative law judge properly found both opinions equivocal on the issue of total disability. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-

[2]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, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

19 (1987). Accordingly, after weighing all the relevant evidence, the administrative law judge rationally determined that the weight of the evidence established that claimant was not totally disabled. *Fields*, *supra*. An administrative law judge may reject a medical report as equivocal because it merely advises against a return to work in a dusty atmosphere, or states that claimant may have difficulty performing manual labor. *Campbell*, *supra*. Moreover, it is within the administrative law judge's discretion to determine whether or not a medical report is reasoned, and the administrative law judge is not required to consider the requirements of claimant's usual coal mine work, or his age, education and work experience if he finds that claimant's medical reports are unreasoned. *Tackett*, *supra*; *Fields*, *supra*. Finally, the Decision and Order provides no support for claimant's arguments that the administrative law judge independently evaluated, or selectively analyzed the record evidence. *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988); *DeFore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). As we find that the administrative law judge has provided a rational basis for his findings, we conclude that substantial evidence supports the administrative law judge's determination.

The administrative law judge is empowered to weigh and draw inferences from the medical evidence, *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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that claimant has not established the presence of a totally disabling respiratory impairment as it is supported by substantial evidence, and in accordance with law.

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge