BRB No. 99-0427 BLA

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| MYRON M. SHINO | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | DATE ISSUED: |
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| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Respondent | ) | |

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Bernard J. Brown, Carbondale, Pennsylvania, for claimant.

Barry H. Joyner (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (97-BLA-1937) of Administrative Law Judge Robert D. Kaplan 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 considered the instant claim, filed on October 16, 1996, under the applicable regulations at 20 C.F.R. Part 718. After crediting claimant with four and one-quarter years of coal mine employment, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4) and total disability under 20 C.F.R. §718.204(c)(1)-(4). Accordingly, he denied benefits. On appeal, claimant contends that the administrative law judge erred by not crediting him with in excess of ten years of coal mine employment, and in failing to find the medical opinion evidence sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), and total disability pursuant to Section 718.204(c)(4). The Director, Office of Workers' Compensation Programs, responds urging

affirmance of the administrative law judge's decision denying benefits.[1]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, a claimant must establish the existence of 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 one of these elements precludes entitlement. *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*).

In challenging the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(4), claimant contends that the administrative law judge erred in discounting Dr. McAndrew's opinion and in failing to find the other medical opinion of record, *i.e.*, Dr. Levinson's opinion, supportive of a finding that claimant has pneumoconiosis. With regard to Dr. McAndrew, claimant argues that the administrative law judge should have credited Dr. McAndrew's opinion that claimant suffers from pneumoconiosis and is totally disabled due to the disease because Dr. McAndrew was claimant's treating physician for several years, and because the doctor's opinion letter dated June 12, 1998 corroborated claimant's hearing testimony that he has constant shortness of breath and consequential physical limitations. Claimant also suggests that, because the physicians proffering the x-ray readings of record only reviewed x-ray films and never examined or treated claimant, the administrative law judge erred in finding that the overwhelming majority of negative x-ray interpretations in the record outweighed Dr. McAndrew's medical opinion. Claimant's contentions lack merit.

[1]We affirm the administrative law judge's findings under 20 C.F.R. §§718.202(a)(1)-(3) and 718.204(c)(1)-(3) as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 4-6, 8-10.

The administrative law judge properly discounted Dr. McAndrew's opinion that claimant suffers from pneumoconiosis upon determining that the doctor's opinion was based essentially exclusively on claimant's symptoms and was neither reasoned nor well-documented. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); Decision and Order at 7. The administrative law judge's determination in that regard was rational, as the administrative law judge correctly noted that Dr. McAndrew relied, *inter alia*, upon a negative chest x-ray reading from Dr. Sargent, and clinical examinations, the findings of which the doctor did not describe in any of his three reports of record. Decision and Order at 7; Director's Exhibits 22, 24; Claimant's Exhibit 1. Furthermore, while the administrative law judge noted that Dr. McAndrew was claimant's treating physician, he was not required to credit Dr. McAndrew's opinion on that basis after finding that the doctor's opinion was unreasoned and undocumented. A physician's status as treating physician is just one of the factors to be considered in rendering a decision. *See Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Moreover, contrary to claimant's contention, it is inconsequential whether Dr. McAndrew's letter dated June 12, 1998 corroborates claimant's hearing testimony about his shortness of breath and physical limitations. An administrative law judge may reject or ignore lay testimony regarding a claimant's impairment where he properly rejects claimant's supporting medical evidence. *See Guiliano v. Director, OWCP*, 6 BLR 1-1008 (1984). Finally, contrary to claimant's contention, the administrative law judge properly weighed the chest x-ray readings of record against Dr. McAndrew's opinion when addressing the issue of pneumoconiosis under Section 718.202(a). Decision and Order at 8. In *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997), the United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arose, held that the fact-finder must first consider each of the four regulatory methods of establishing the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4), and then weigh all of the conflicting evidence together under Section 718.202(a)(1)-(4) prior to making a finding regarding that element of entitlement. The administrative correctly stated that the overwhelming majority of the x-ray interpretations of record were negative for pneumoconiosis, and properly found that these readings outweighed Dr. McAndrew's contrary medical opinion.[2] *Williams,*

[2]The record contains nine readings of seven different films. Director's Exhibits 11, 12, 31, 32, 35-39. Dr. Sargent, a B reader and Board-certified radiologist, accounted for five of the

*supra*; Decision and Order at 8. Accordingly, we hold that the administrative law judge properly discounted Dr. McAndrew's opinion that claimant suffers from pneumoconiosis.

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interpretations, all five of which were negative for pneumoconiosis. Director's Exhibits 35-39. Drs. Francke and Barrett, who are likewise B reader/ Board-certified radiologists, each submitted a negative interpretation. The remaining two readings were submitted by Dr. Levinson, who does not possess special radiological qualifications. Director's Exhibits 11, 31. Dr. Levinson read the December 3, 1996 film as negative, but classified the October 30, 1997 film as 1/1 positive for pneumoconiosis. Director's Exhibits 12, 32. In a subsequent report of his examination of claimant on December 17, 1997, however, Dr. Levinson indicated that the October 30, 1997 film was negative for the disease. Director's Exhibit 33.

Additionally, we hold that there is no merit to claimant's contention that Dr. Levinson diagnosed pneumoconiosis. Dr. Levinson examined claimant on December 3, 1996 and December 17, 1997, and on both occasions specifically found that claimant does not have pneumoconiosis. In each of his two reports, Dr. Levinson found claimant's x-rays to be negative for the disease, and neither report indicated a diagnosis of a pulmonary or respiratory disease arising out of coal dust exposure.[3] Director's Exhibits 9, 33. Instead, Dr. Levinson diagnosed claimant with arteriosclerotic heart disease, coronary artery disease, chronic atrial fibrillation and hypertension, and found claimant to be obese. *Id*. The administrative law judge properly credited Dr. Levinson's opinion that claimant does not have pneumoconiosis as a reasoned and documented opinion. *See Clark, supra; Tackett, supra;* Decision and Order at 7-8; Director's Exhibits 9, 33. Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(4).

Inasmuch as claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a requisite element of entitlement under Part 718, the administrative law judge properly denied benefits. *Trent*, *supra*; *Gee*, *supra*; *Perry*, *supra*. Consequently, we need not address claimant's contentions with regard to the administrative law judge's length of coal mine employment finding and finding of no total disability under Section 718.204(c)(4), inasmuch as any errors therein would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

[3]There is thus simply no evidence to support claimant's allegation that Dr. Levinson told him that he has coal workers' pneumoconiosis.

MALCOLM D. NELSON, Acting
Administrative Appeals Judge