BRB No. 00-0552 BLA

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| JAMES THOMAS MEADE | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
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| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Respondent | ) | DECISION and ORDER |

Appeal of the Decision and Order of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

James Thomas Meade, Newtown, West Virginia, *pro se*.

Helen H. Cox (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, without the assistance of counsel, the Decision and Order (99-BLA-0406) of Administrative Law Judge Daniel L. Leland 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). In this duplicate claim, the administrative law judge found that claimant's prior claim was finally denied on September 19,1996. After crediting claimant with one and one-half years of coal mine employment, the

[1] A history of the prior claims filed by claimant is set forth in the Board's Decision and Order affirming Administrative Law Judge Charles P. Rippey's denial of benefits in the previously filed duplicate claim. *Meade v. Director, OWCP*, BRB No. 96-1007 BLA (Sept.

administrative law judge found the newly submitted medical evidence insufficient to establish either the existence of pneumoconiosis or a totally disabling respiratory impairment, and, therefore, insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309. *See* 20 C.F.R. §§718.202(a)(1)-(4); 718.204(c)(1)-(4); 725.309. Accordingly, benefits were denied. Claimant appeals, generally challenging the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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 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*).

Initially, the administrative law judge permissibly credited claimant with one and one-half years of coal mine employment based claimant's Social Security earnings record. *See* Decision and Order at 4. *See Tackett v. Director, OWCP*, 6 BLR 1-839 (1984). We, therefore, affirm the finding of the administrative law judge on the length of coal mine employment.

As this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, the administrative law judge properly applied the standard enunciated in *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc, Lisa Lee Mines v. Director, OWCP [Rutter]*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), *cert. denied*, 117 S.Ct. 763 (1997), for deciding whether claimant demonstrated a material change in conditions at Section 725.309. In *Rutter*, the Court held that in ascertaining whether a claimant established a material change in conditions pursuant to Section 725.309, the administrative law judge must consider and weigh all the newly

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19, 1996)(unpub.).

submitted evidence to determine if claimant has established at least one of the elements of entitlement previously decided against him. In his prior claim, claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. § 718.202(a). *See* Decision and Order of Administrative Law Judge Charles P. Rippey, Case No. 94 BLA 1059 (April 16, 1996).

The administrative law judge properly reviewed only the evidence submitted following the denial of claimant's prior claim. *Rutter, supra*. In reviewing the newly submitted evidence regarding the existence of pneumoconiosis, the administrative law judge concluded that two B readers, Drs. Ranavaya and Gaziano, read x-rays as positive for the existence of pneumoconiosis. Director's Exhibits 15, 28, 30. The administrative law judge further found that Drs. McFarland and Navani, whom he characterized as both B readers and Board-certified radiologists, interpreted x-rays as negative for pneumoconiosis. Director's Exhibits 14, 31. In weighing this evidence, the administrative law judge accorded greatest weight to the negative interpretations of Drs. McFarland and Navani, based on their superior qualifications. *See Melnick v. Consolidation Coal Company*, 16 BLR 1-31 (1991)(*en banc*); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

In his brief, the Director asserts that the administrative law judge erred in characterizing Dr. Navani's qualifications in weighing the x-ray evidence at 20 C.F.R. §718.202(a)(1), because Dr. Navani's B reader qualification had expired prior to the time he interpreted the x-ray. Director's Brief at 3; Director's Exhibit 31. Indeed, while Dr. Navani indicated on the x-ray interpretation form that he was both a Board certified radiologist and a B reader, there is a notation in the margin indicating that his status as a B reader was only in effect until April 30, 1999. *Id*. He read the x-ray dated March 31, 1999 on May 23, 1999, after his status as a B-reader had lapsed. Thus, since the administrative law judge mischaracterized Dr. Navani's qualifications, we vacate the administrative law judge's finding at Section 718.202(a)(1) and remand the case for the administrative law judge to reconsider whether the newly submitted evidence is sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1), and thus a material change in conditions pursuant to Section 725.309. *See Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). Furthermore, on remand, the administrative law judge must weigh together all types of evidence relevant to the existence of pneumoconiosis. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2- (4th Cir. 2000).

Inasmuch as the administrative law judge correctly determined that there was no autopsy or biopsy evidence of record, he properly found that the existence of pneumoconiosis could not be established pursuant to 20 C.F.R. §718.202(a)(2). Likewise, the administrative law judge further correctly found that claimant was not eligible for any of the presumptions enumerated at 20 C.F.R. §718.202(a)(3). We, therefore, affirm the administrative law judge's findings that the evidence was insufficient to establish the existence of

pneumoconiosis at Sections 718.202(a)(2) and 718.202(a)(3).

Considering the evidence at 20 C.F.R. §718.202(a)(4), the administrative law judge found that Dr. Ranavaya's diagnosis of coal workers' pneumoconiosis was based on an incorrect work history as Dr. Ranavaya relied on a ten year coal mine employment history while the evidence indicated only one and one-half years of such employment. Decision and Order at 5. The administrative law judge, therefore, acted within his discretion in discrediting Dr. Ranavaya's opinion. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 10 BLR 2-172 (4th Cir. 1997); *Crosson v. Director, OWCP*, 6 BLR I-809 (1984); *see also Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983). Accordingly, the administrative law judge's finding at Section 718.202(a)(4) is affirmed.

If, on remand, the administrative law judge determines that the newly submitted evidence is sufficient to establish a material change in conditions, then he must weigh all of the evidence together, both old and new, at every element of entitlement, to determine if the evidence is sufficient to establish eligibility. *Rutter*, *supra*.

[2] A review of the newly submitted evidence reveals that Dr. D' Brot diagnosed chronic obstructive pulmonary disease, but did not state whether it was related to coal mine employment. Director's Exhibit 19. His opinion is insufficient, therefore, to establish the existence of pneumoconiosis. *See* 20 C.F.R. §718.201.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed in part, vacated in part, and this case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge