BRB No. 01-0439 BLA

CARLTON DEAN BRADFORD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WILLIAMS MOUNTAIN COAL COMPANY	)	DATE ISSUED:
	)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle and Rundle, L.C.), Pineville, West Virginia, for claimant.

Kathy L. Snyder (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

Barry H. Joyner (Eugene Scalia, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (00-BLA-0822) of Administrative Law Judge Daniel L. Leland (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).[1] The administrative law judge found

[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit

that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2000) and total respiratory or pulmonary disability pursuant to 20 C.F.R. §718.204(c) (2000).[2] Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that claimant failed to establish that he has pneumoconiosis and is totally disabled by it. Employer responds, and contends that substantial evidence supports the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis and a totally disabling respiratory or pulmonary impairment. Employer thus urges the Board to affirm the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a brief limited to the issue of the impact of the new regulations.

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

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would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by claimant, employer and the Director, Office of Workers' Compensation Programs, regarding the impact of the challenged regulations.

[2]The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now found at 20 C.F.R. §718.204(b), while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

disturbed. 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 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that the pneumoconiosis arose from his coal mine employment, that he is totally disabled due to a respiratory or pulmonary impairment, and that his pneumoconiosis is a substantially contributing cause of this impairment. 20 C.F.R. §§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*).

Claimant challenges the administrative law judge's finding that the x-ray and medical opinion evidence is insufficient to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1) and (a)(4) (2000).[3] Claimant argues that the administrative law judge based his determination on the large number of negative x-rays employer developed. Claimant further asserts that the administrative law judge accepted, without discussion, the opinion of employer's physicians that claimant does not have pneumoconiosis and is not totally disabled by it. In this regard, claimant argues that the administrative law judge speculated that the diagnosis of pneumoconiosis rendered by Dr. Rasmussen, as well as those diagnoses of pneumoconiosis relied upon by the West Virginia Occupational Pneumoconiosis Board in awarding benefits, were based primarily on positive x-ray readings. Claimant asserts that rather, these diagnoses were based on "all the evidence available to them at that time." Claimant's Brief at 8.

[3]The administrative law judge found that there is no biopsy or autopsy evidence and thus claimant cannot establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(2) (2000). The administrative law judge further found that since there is no evidence of complicated pneumoconiosis and the instant claim is a living miner's claim filed after January 1, 1982, claimant cannot establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(3) (2000) because none of the presumptions referred to therein is applicable, *see* 20 C.F.R. §§718.304, 718.305, 718.306. These findings are affirmed as unchallenged on appeal. 20 C.F.R. §718.202(a)(2), (a)(3); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant's contentions lack merit. Contrary to claimant's argument, the administrative law judge considered both the qualitative and quantitative weight of the x-ray evidence, and properly found, based on the readings of physicians qualified as B readers and dually qualified as B readers and Board-certified radiologists, that a preponderance of the x-ray readings was negative. Decision and Order at 6-7; *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991).

Further, the administrative law judge did not summarily credit those opinions rendered by employer's experts, but fully discussed and weighed the conflicting medical opinions of record. *See* Decision and Order at 6-7; *Doss v. Director, OWCP*, 53 F.3d 654, 19 BLR 2-181 (4th Cir. 1995). In this regard, the administrative law judge correctly noted that, other than the award of benefits made by the West Virginia Occupational Pneumoconiosis Board, Dr. Rasmussen was the only physician to diagnose a coal dust-related pulmonary disease. Director's Exhibits 12, 13, Claimant's Exhibit 4. The administrative law judge added:

> Drs. Zaldivar, Castle, Fino, Jarboe and Hippensteel, all board certified in pulmonary diseases unlike Dr. Rasmussen, determined that claimant does not have coal workers' pneumoconiosis and that his mild obstructive pulmonary disease is due to cigarette smoking. They provided well reasoned opinions and their conclusions are consistent with claimant's cigarette smoking history, which has continued for forty years at the rate of at least one pack a day. The findings of Dr. Rasmussen and the [West Virginia Occupational Pneumoconiosis] Board are based primarily on positive x-ray readings, although a preponderance of the x-ray readings are [sic] negative for pneumoconiosis. After weighing the evidence, I find that claimant does not have pneumoconiosis.

Decision and Order at 6-7. The administrative law judge thereby properly found that the evidence supportive of a finding of the existence of pneumoconiosis, including Dr. Rasmussen's opinion, was outweighed by the contrary evidence of record, including the opinions of the highly qualified physicians. *See King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *see also Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985).

Based on the foregoing, we hold that the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1) and (a)(4) (2000), are supported by substantial evidence. We, therefore, affirm those findings. The administrative law judge thus properly determined that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a) (2000) in the instant

case. 20 C.F.R. §718.202(a); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

Because claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement under Part 718, we affirm the administrative law judge's denial of benefits in the instant case. *Trent, supra*; *Perry; supra*.[4]

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

[4]In light of the foregoing, we need not reach claimant's argument that the administrative law judge erred in finding that claimant's pulmonary impairment was mild and nondisabling under 20 C.F.R. §718.204(c) (2000). *See* 20 C.F.R. §718.204(b).