BRB No. 03-0300 BLA

RICHARD H. DANIELS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHANNOPIN MINING COMPANY	)	
	)	
and	)	DATE ISSUED: 01/13/2004
	)	
FIRE & CASUALTY COMPANY OF CT	)	
	)	
Employer/Carrier-Respondents	)	
	)	
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.

Daniel L. Chunko (Chunko Law Firm), Washington, Pennsylvania, for claimant.

Raymond F. Keisling (Keisling, Schmitt & Coletta), Carnegie, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (02-BLA-5152) of Administrative Law Judge Daniel L. Leland 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] After crediting claimant with sixteen years of coal mine employment, the administrative law judge considered this claim, which was filed on June 11, 2001, pursuant to the applicable regulations at 20 C.F.R. Part 718. The administrative law judge determined that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge further found claimant entitled to the rebuttable presumption that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), and that the presumption was not rebutted. The administrative law judge then found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, he denied benefits. On appeal, claimant contends that the administrative law judge erred in failing to find the pulmonary function study evidence and medical opinion evidence sufficient to establish total disability under Section 718.204(b)(2)(i) and (iv), and in failing to find disability causation established under Section 718.204(c). Employer responds in support of the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not presently intend to participate in this appeal.[2]

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).

On appeal, claimant challenges the administrative law judge's total disability and disability causation findings. Specifically, claimant asserts that the record includes two pulmonary function studies, administered on June 8, 2001 and July 27, 2001, which produced qualifying results, and should have been credited

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[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 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2]We affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment finding and findings pursuant to 20 C.F.R. §§718.202(a), 718.203(b) and 718.204(b)(2)(ii), (iii). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3, 6-8.

as sufficient to establish total disability pursuant to Section 718.204(b)(2)(i). The record does not indicate that a pulmonary function study was administered on July 27, 2001, however.[3] Furthermore, while the record does include the qualifying results of a pulmonary function study administered on June 8, 2001, claimant's reference to this study merely amounts to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). We affirm, therefore, the administrative law judge's finding that the evidence is insufficient to establish total disability pursuant to Section 718.204(b)(2)(i).

With regard to the medical opinion evidence pertaining to total disability and disability causation, claimant's sole argument on appeal is that the administrative law judge erred in crediting Dr. Renn's opinion that claimant is not totally disabled from a respiratory standpoint. A review of the administrative law judge's Decision and Order reveals that he did not, in fact, credit Dr. Renn's medical opinion. To the contrary, the administrative law judge discounted Dr. Renn's opinion as equivocal.[4] Decision and Order at 8; Employer's Exhibit 1. While claimant generally asserts in his Petition for Review that the administrative law judge erred in discounting Dr. Levine's medical opinion,[5] claimant does not address the issue in his brief on appeal. The administrative law judge discounted Dr. Levine's opinion that claimant is totally disabled due to pneumoconiosis on the basis that the opinion was not well reasoned. Decision and Order at 8;

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[3]The record reflects that an arterial blood gas study was administered on July 27, 2001, the results of which are non-qualifying. Director's Exhibits 16, 17.

[4]The administrative law judge discounted Dr. Renn's opinion as equivocal because Dr. Renn indicated that while he believed claimant likely has the respiratory capacity for his last regular coal mine employment as a roof bolter, he could not be certain because there was no valid spirometry. Decision and Order at 8; Employer's Exhibit 1.

[5]We note that, in addition to Dr. Levine's opinion and Dr. Renn's contrary opinion, the record includes a medical opinion from Dr. Cho, who examined claimant on August 7, 2001. Director's Exhibit 16. Since Dr. Cho stated that claimant is "not disabled by coal workers' pneumoconiosis," his opinion does not support a finding of disability causation pursuant to 20 C.F.R. §718.204(c). *Id*. Nor does Dr. Cho's report support a finding of total disability pursuant to 20 C.F.R. §718.204(b), since Dr. Cho does not indicate whether claimant suffers from some other pulmonary or respiratory impairment. *Id*. Director's Exhibit 16.

Claimant's Exhibit 1. Claimant's failure to assign specific error to the administrative law judge's finding that Dr. Levine's opinion is not well reasoned precludes review of this credibility determination by the administrative law judge. *See Sarf v. Director,* OWCP, 10 BLR 1 119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Consequently, we affirm the administrative law judge's findings that claimant failed to establish total disability and total disability due to pneumoconiosis under Section 718.204(b)(2)(iv), (c).

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