BRB No. 03-0323 BLA

RALPH C. CRUM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BUFFALO MINING COMPANY	)	DATE ISSUED: 01/29/2004
	)	
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 Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

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

Mary Rich Maloy (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (01-BLA-1217) of Administrative Law Judge Robert J. Lesnick rendered on this duplicate 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 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

twenty-seven years of coal mine employment established and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge concluded that although the newly submitted evidence was sufficient to establish the existence of simple pneumoconiosis, it was insufficient to establish total disability and total disability due to pneumoconiosis, elements previously adjudicated against claimant. The administrative law judge also found that the new evidence was insufficient to establish the existence of complicated pneumoconiosis and entitlement to the irrebuttable presumption of totally disabling pneumoconiosis at 20 C.F.R. §718.304. The administrative law judge, therefore, found that a material change in conditions was not established.[2] Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2) and erred in finding that claimant was not entitled to the irrebuttable presumption of totally disabling pneumoconiosis at Section 718.304 based on evidence establishing the existence of complicated pneumoconiosis. Employer responds urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director), is not participating in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law, they are binding upon this Board and may not be 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 in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from 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

[2] Claimant filed his first claim for benefits on May 10, 1994. Director's Exhibit 23-1. Administrative Law Judge Edward Terhune Miller issued a Decision and Order denying benefits on November 24, 1997, finding that although the existence of pneumoconiosis arising out of coal mine employment was established, total disability and disability causation were not established. Director's Exhibit 23-23-51. The Director, Office of Workers' Compensation Programs, (the Director) filed a motion for reconsideration on December 16, 1997, contending that claimant was entitled to the irrebuttable presumption of totally disabling pneumoconiosis at 20 C.F.R. §718.304 based on evidence establishing the existence of complicated pneumoconiosis. Director's Exhibit 23-52. Judge Miller denied the Director's request for reconsideration on January 8, 1998, finding no evidence of complicated pneumoconiosis. Director's Exhibit 23-53. Claimant filed the instant duplicate claim on August 22, 2000.

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*).

Claimant contends that the administrative law judge erred in finding that the pulmonary function studies of record were unreliable and therefore insufficient to establish total disability.[3] The study performed by Dr. Ranavaya on October 10, 2000, produced non-qualifying values and was found invalid by both Drs. Ranavaya and Renn based on, among other reasons, claimant's insufficient effort. Director's Exhibit 7; Employer's Exhibit 6. The study performed by Dr. Crisalli on October 17, 2001, produced qualifying values, but was found invalid by both Drs. Crisalli and Renn, based on, among other reasons, insufficient effort. Contrary to claimant's contention, therefore, the administrative law judge permissibly found the studies to be unreliable, and therefore, insufficient to establish total disability. *Trent*, 11 BLR 1-26; *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985); *Runco v. Director, OWCP*, 6 BLR 1-945 (1984); *Minton v. Director, OWCP*, 6 BLR 1-670 (1983).

Further, the administrative law judge rationally found the new blood gas studies of record insufficient to establish total disability as they produced non-qualifying values.[4] 20 C.F.R. §718.204(b)(2)(ii). Director's Exhibit 9; Employer's Exhibit 1.

Of the six recent medical opinions of record, only Drs. Ranavaya and Rosenberg found a disabling respiratory impairment. The administrative law judge accorded more weight to the opinions of Drs. Crisalli, Hippensteel and Spagnolo, finding no totally disabling respiratory impairment, as he found them better reasoned and documented and because they were supported by the objective evidence of record. This was rational. *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986) and 13 BLR 1-46 (1986), *aff'd on recon*. 9 BLR 1-104 (1986)(*en banc*); *Gee v. W.G. Moore and Sons*, 9 BLR 1- 4 (1986)(*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wright v. Director, OWCP*, 8 BLR

[3] The administrative law judge found that claimant's last usual coal mine employment on the belt line entailed periodic, moderate exertion and that his prior job as a roof bolter entailed periodic, moderate exertion. Decision and Order at 5. Thus, contrary to claimant's contention, the administrative law judge considered the exertional requirements of claimant's coal mine employment. *See* Decision and Order at 5.

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

1-245, 1-247 (1985). Accordingly, the administrative law judge found, on weighing all the medical evidence together, *i.e.*, the non-qualifying pulmonary function and blood gas studies and the medical opinions, that claimant failed to establish total respiratory disability. This was proper. *See Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986) *aff'd on recon en banc*, 9 BLR 1-237(1987). Thus, the administrative law judge rationally found that the evidence was insufficient to establish total respiratory disability, an essential element of entitlement.

Claimant also contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of complicated pneumoconiosis, and therefore, that the miner was not entitled to the irrebuttable presumption of totally disabling pneumoconiosis. We disagree. In considering the evidence relevant to the existence of complicated pneumoconiosis, the administrative law judge determined that while Dr. Ranavaya, a B reader, and Dr. Binns, a dually qualified physician, found large opacities indicative of complicated pneumoconiosis on claimant's October 10, 2000 x-ray, Dr. Scott, a dually qualified physician, found evidence of only simple pneumoconiosis and no large opacities on that x-ray. Director's Exhibits 10, 11, 22. Further, the administrative law judge noted that Dr. Scott and Dr. Repsher, a B reader, found evidence of simple pneumoconiosis, but no large opacities on claimant's October 17, 2001 x-ray. Employer's Exhibits 3, 5. Thus, the administrative law judge noted that the majority of claimant's x-rays were read negative for the existence of complicated pneumoconiosis by both B-readers and dually qualified readers. The administrative law judge also found that claimant's most recent x-ray was read consistently negative for the existence of complicated pneumoconiosis. Thus, the administrative law judge found the x-ray evidence insufficient to establish the existence of complicated pneumoconiosis. This was rational. Director's Exhibits 10, 11, 22; Employer's Exhibits 3, 5; 20 C.F.R. §718.202(a)(1); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 19920; *Clark v. Kart-Robbins Coal Co.*, 12 BLR 1-149 (1988)(*en banc*).

The administrative law judge further found that the opinion of Dr. Ranavaya, the only physician of record to diagnosis the existence of complicated pneumoconiosis, was outweighed by the contrary medical opinions which were better reasoned and documented and by the preponderance of the more credible x-ray evidence. This was rational. 20 C.F.R. §718.304; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*); *Dillon*, *supra*; *Fields*, *supra*; *King*, *supra*. We therefore affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of complicated pneumoconiosis, and the finding that claimant is not, therefore, entitled to invocation of the irrebuttable presumption of totally disabling pneumoconiosis. 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304; *Lester*, 993 F.2d 1143, 17 BLR 2-114; *Melnick*, 16 BLR 1-31. Accordingly, we affirm the administrative law judge's finding that the new evidence of

record failed to establish total respiratory disability or the existence of complicated pneumoconiosis, and therefore, a material change in conditions. *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

The administrative law judge is empowered to weigh the medical evidence of record and draw his own inferences therefrom, *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, *Anderson v. Valley Camp Coal Co. of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish total disability and the existence of complicated pneumoconiosis as it is supported by substantial evidence and is in accordance with law.

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