BRB No. 03-0357 BLA

ALBERT SIZEMORE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOUNTAIN COALS CORPORATION	)	DATE ISSUED: 01/14/2004
	)	
and	)	
	)	
ZURICH AMERICAN INSURANCE GROUP	)	
	)	
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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, 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-5296) of Administrative Law Judge Joseph E. Kane on a claim[1] filed pursuant to the provisions of

[1] Claimant, Albert Sizemore, filed his application for benefits on April 2, 2001. Director's Exhibit 1.

Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act).[2] The administrative law judge initially credited the parties' stipulation that claimant worked in qualifying coal mine employment for twenty years. Next, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find the existence of pneumoconiosis established by x-ray and medical opinion evidence under Sections 718.202(a)(1) and (a)(4) and total respiratory disability due to pneumoconiosis under Section 718.204(b). The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.[3]

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 the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In challenging the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1), claimant argues that the administrative law judge erred by placing substantial weight on the numerical superiority of the x-ray interpretations and by relying exclusively on the qualifications of the physicians providing the x-ray interpretations. Employer contends that an administrative law judge is not required to defer to a physician with superior qualifications.

Section 718.202(a)(1) provides, in pertinent part, "where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration shall be given to the radiological qualifications of the physicians interpreting such X-rays." 20 C.F.R. §718.202(a)(1). The administrative law judge considered the radiological expertise of the

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[2] 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.

[3] We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(2), (3) and 718.204(b)(2)(i)-(iii) because these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 10, 14.

physicians and accorded greater weight to the negative interpretations of those physicians who were both Board-certified radiologists and B-readers. This was rational. 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 10; Director's Exhibits 11, 13; Employer's Exhibits 1, 2. Consequently, we affirm the administrative law judge's Section 718.202(a)(1) determination. *See* 20 C.F.R. §718.202(a)(1).

Regarding Section 718.202(a)(4), claimant avers that the administrative law judge erred not only by failing to credit the opinion of Dr. Baker, but also by substituting his opinion for that of Dr. Baker. Claimant asserts that the administrative law judge erred in discrediting Dr. Baker's opinion not only because Dr. Baker relied on a positive x-ray interpretation, which was contrary to the administrative law judge's finding that the x-ray evidence was negative for the existence of pneumoconiosis, but also because the record contains subsequent negative x-ray readings.

The administrative law judge found that, although Dr. Baker's opinion diagnosing the presence of pneumoconiosis was well documented, it was entitled to no weight because it was poorly reasoned, *i.e.*, the administrative law judge found that Dr. Baker relied on claimant's positive x-ray and coal dust exposure, but failed to provide any additional rationale or explanation for his finding of pneumoconiosis. This was rational. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405, 1-407 (1985); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985). *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145, 1-147 n.2 (1984). Because this determination was rational and supported by substantial evidence, we affirm the administrative law judge's rejection of Dr. Baker's opinion.

Claimant next asserts that in rendering his finding that claimant was not totally disabled, the administrative law judge erred by finding that the medical opinion evidence was in equipoise and that claimant failed, therefore, to carry his burden of establishing total respiratory disability by a preponderance of the evidence. Citing, *Meadows v. Westmoreland Coal Co.*, 6 BLR 1-773 (1984), claimant argues that a single medical opinion may be sufficient to invoke the presumption of total disability.

Claimant's reliance on *Meadows* is misplaced, however, because that case dealt with the application of the interim presumption of total disability due to pneumoconiosis set forth at 20 C.F.R. Part 727. The instant case arises under 20 C.F.R. Part 718 which requires that claimant establish each element of entitlement. 20 C.F.R. §§718.2, 718.202, 718.203,

718.204; *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*); *see 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). We, therefore, reject claimant's contention in this regard.

Finally, claimant contends that the administrative law judge erred by failing to consider the exertional requirements of claimant's usual coal mine work or to consider that claimant's disability, age, and limited education and work experience would preclude claimant from obtaining gainful employment outside of the coal mine industry. Assigning little probative weight to the opinion of Dr. Baker, the administrative law judge determined that the opinion of Drs. Simpao, who opined that claimant did not have the respiratory capacity to perform his usual coal mine work, and that the opinion of Dr. Dahhan, who opined that claimant retained the physiological capacity to continue his previous coal mine employment, were probative inasmuch as both physicians' opinions were well-reasoned and documented.

After considering the medical opinion evidence in its entirety, the administrative law judge concluded that the narrative reports weighed "slightly in favor of finding that Claimant is totally disabled," Decision and Order at 16, but that on considering the medical opinion evidence along with the non-qualifying pulmonary function and blood gas studies, claimant failed to establish total disability. This was rational. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*). We, therefore, affirm the administrative law judge's determination that claimant failed to establish total respiratory disability by a preponderance of the evidence after weighing all the evidence as a whole pursuant to Section 718.204(b), and we need not consider claimant's other arguments. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 382 n.4.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge