BRB No. 03-0410 BLA

WILLIE BOGGS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 01/12/2004
	)	
BLUE DIAMOND COAL COMPANY	)	
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
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 of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan, Hyden, Kentucky, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order (2002-BLA-5194) of Administrative Law Judge Joseph E. Kane 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).[1] This case is before the Board for a third time.[2] Based on the date of filing, the administrative law judge adjudicated this duplicate claim pursuant to 20 C.F.R Part 718. The administrative law judge found the newly submitted evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or total respiratory disability pursuant to 20 C.F.R. §718.204(b). Thus, the administrative law judge found that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). Accordingly, benefits were denied.

On appeal, claimant challenges the findings of the administrative law judge that the evidence is insufficient to establish the existence of pneumoconiosis and total respiratory disability. Employer has not participated in this appeal. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate 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 supported by substantial evidence, are rational,

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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]Claimant initially filed an application for benefits on October 21, 1992, which was denied on August 28, 1995, by Administrative Law Judge J. Michael O'Neill due to claimant=s failure to establish any required element of entitlement. Director's Exhibit 1. On appeal, the Board affirmed the administrative law judge=s finding of thirty-three years of coal mine employment, the finding of no total disability pursuant to 20 C.F.R., §718.204(c) (2000), and the denial of benefits. *Boggs v. Blue Diamond Coal Co.*, BRB No. 95-2147 BLA (June 27, 1996)(unpub.); Director's Exhibit 1. Claimant filed a petition for modification on September 23, 1996, which was denied by Administrative Law Judge O'Neill on June 8, 1998, as claimant failed to establish the existence of pneumoconiosis or total respiratory disability pursuant to 20 C.F.R. §718.202(a), 718.204(c) (2000), which precluded a finding of a change in conditions or a mistake of fact pursuant to 20 C.F.R. §725.310 (2000). Director=s Exhibit 1. On appeal, the Board affirmed the denial of benefits. *Boggs v. Blue Diamond Coal Co.*, BRB No. 98-1220 BLA (June 25, 1999)(unpub.); Director's Exhibit 1. Claimant filed the present duplicate claim on February 21, 2001. Director's Exhibit 3.

and are consistent with applicable 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 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*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error. Pursuant to Section 718.202(a)(1), claimant contends that the administrative law judge "need not defer to a doctor with superior qualifications" and "need not accept as conclusive the numerical superiority of x-ray interpretations." Claimant's Brief at 4. Claimant further suggests that the administrative law judge "may have" improperly selectively analyzed the x-ray evidence of record. Claimant's Brief at 4. We find no merit in these assertions. The administrative law judge weighed all the x-ray readings of record submitted since the previous denial of benefits, and permissibly credited the greater number of negative readings by those physicians with superior qualifications. Decision and Order at 6, 7, 11; Employer's Exhibits 1, 3-5; Claimant's Exhibit 1; Director's Exhibits 7, 9; *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1995);[3] *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985). This determination is supported by the record since all four of the negative interpretations were submitted by physicians who were either Board-certified radiologists, or B readers, while only one of the three positive readings was interpreted by a physician with specialized radiological qualifications.[4] Employer's Exhibits 1, 3-5; Claimant's Exhibit 1; Director's Exhibits 7, 9.

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[3]This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, inasmuch as claimant=s coal mine employment occurred in the Commonwealth of Kentucky. Director's Exhibit 2; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

[4]A B reader is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination by the National Institute of Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135 n.16,

Moreover, we find no evidence to support claimant's suggestion that the administrative law judge selectively analyzed the x-ray evidence of record.[5]

Pursuant to Section 718.202(a)(4), we reject claimant=s argument that the administrative law judge erred in finding that the opinions of Drs. Baker and Hussain were based only on interpretations of claimant's x-rays and his coal mine employment history and were, therefore, not reasoned medical opinions. The record indicates that both of these physicians stated that the rationale for their diagnoses of pneumoconiosis was claimant's work history and positive x-ray interpretations, without specifying any additional factors, such as the results of their physical examinations or objective tests. Director's Exhibits 7, 9. As the record supports the determination that these reports were based solely on claimant's x-ray readings and employment history and lacked sufficient discussion or analysis to support the diagnosis, the administrative law judge permissibly accorded no weight to these opinions at Section 718.202(a)(4). Decision and Order at 8, 9, 12-14; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985). Claimant appears to argue that because these medical opinions were documented, the administrative law judge was required to credit them, even though he finds them unreasoned. The law, however, is to the contrary. *See Cornett*, 227 F.3d 569, 22 BLR 2-107.

The administrative law judge also acted within his discretion in crediting as well-documented and reasoned the opinion of Dr. Dahhan, finding no evidence of pneumoconiosis, since Dr. Dahhan provided a complete report of his examination of claimant, including objective tests, an x-ray reading and a complete history, and clearly stated how the data supported his diagnosis. Decision and Order at 9, Employer's Exhibit 1; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-8 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Accordingly, we affirm the administrative law judge's finding that the record did not contain a credible medical opinion supporting a finding of pneumoconiosis.

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11 BLR 2-1 n.16 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). A Board–certified radiologist" is a physician who is certified in radiology or diagnostic roentology by the American Board of Radiology or the American Osteopathic Association. 20 C.F.R. §718.202(a)(ii)(C).

[5]The administrative law judge's determination that the newly submitted evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. '718.202(a)(2), (3), is affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

We also hold that substantial evidence supports the administrative law judge's finding that the newly submitted evidence of record was insufficient to establish the presence of a totally disabling respiratory impairment. Pursuant to Section 718.204(b)(2)(iv),[6] we reject claimant's contention that the administrative law judge erred by finding the medical reports in equipoise since a single medical report may support a finding of total disability. The Decision and Order indicates that the administrative law judge rationally found Dr. Baker's opinion poorly reasoned as this physician failed to explain how claimant=s pulmonary function studies indicated a Class I respiratory impairment and stated that pneumoconiosis alone rendered claimant totally disabled because claimant should receive no further coal dust exposure, which is not a finding of total disability under the Act. Decision and Order at 16; Director's Exhibit 7; *Zimmerman v. Director, OWCP,* 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Clark,* 12 BLR 1-149, *Tackett v. Cargo Mining Co.,* 12 BLR 1-11 (1988)(*en banc*). The administrative law judge also rationally determined that Dr. Hussain's opinion is insufficient to establish total disability as he failed to provide a rationale for his finding of a mild impairment, and also stated that claimant could perform his usual coal mine employment. Decision and Order at 16; Director's Exhibit 9; *Clark,* 12 BLR 1-149 ; *Tackett,* 12 BLR 1-11. The administrative law judge also permissibly credited Dr. Dahhan's opinion, that claimant did not have a totally disabling respiratory impairment, as well reasoned and supported by this physician's examination, objective test results, x-rays, and occupational history. Decision and Order at 16-17; Employer's Exhibit 1; *Trumbo,* 17 BLR 1-85; *Fields,* 10 BLR 1-19.

We further reject claimant's contention that the administrative law judge was required to consider the requirements of claimant's usual coal mine employment in conjunction with the medical reports of record, since none of the medical reports provided specific limitations which could be compared to claimant's work requirements. *See Turner v. Director, OWCP*, 7 BLR 1-419 (1984); *Parsons v. Black Diamond Coal Co.,* 7 BLR 1-236 (1984); *Laird v. Alabama By-Products Corp.,* 6 BLR 1-1146 (1984). We also hold that it was unnecessary for the administrative law judge to consider evidence relating to claimant=s age, education and work experience since these factors are relevant only in determining the miner's ability to perform comparable and gainful work, not to establishing total disability from claimant's usual coal mine work. *See* 20 C.F.R. §718.204(b)(2)(iv); *Fields,* 10 BLR 1-19. As we hold that substantial evidence supports the administrative law judge's finding that Dr. Dahhan's opinion outweighed the contrary opinions of Drs. Baker and Hussain, we affirm his finding that the medical evidence is insufficient to establish the presence of a totally

[6]We affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.204(b)(i)-(iii), as unchallenged on appeal. *Skrack,* 6 BLR 1-710.

disabling respiratory impairment. Decision and Order at 17; Employer's Exhibit 1; Director's Exhibits 7, 9.

Moreover, as we have affirmed the administrative law judge's finding that the newly submitted evidence of record is insufficient to establish the existence of pneumoconiosis or a totally disabling respiratory impairment, we also affirm the finding that claimant has failed to establish a material change in conditions pursuant to Section 725.309(d) (2000). *See Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). Consequently, we affirm the denial of benefits.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge