BRB No. 97-0685 BLA

ESTILL HALL)
)
Claimant-Petitioner)
)
v.)
)
PETER FORK MINING COMPANY) DATE ISSUED:
)
and)
)
OLD REPUBLIC 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 - Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Lawrence C. Renbaum (Arter & Hadden), Washington, D.C., for employer/carrier.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order - Denying Benefits (95-BLA-1720) of Administrative Law Judge Rudolf L. Jansen on a duplicate claim filed pursuant to the

[1] Claimant is Estill Hall, the miner, who filed two claims with the Department of Labor (DOL). The first, filed on April 3, 1984, was denied by Administrative Law Judge Charles W. Campbell in a Decision and Order dated September 22, 1989. Director's Exhibit 51. The second, the instant claim, was filed on August 4, 1994. Director's Exhibit 1.

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 administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge found a material change in condition pursuant to 20 C.F.R. §725.309(c) was not established and denied the claim.

On appeal, claimant challenges the administrative law judge's finding at Sections 718.202(a)(1), (4) and 718.204(c)(4), contending that the newly submitted evidence establishes a material change in conditions at Section 725.309. Employer, in response, asserts that the administrative law judge's finding that the evidence fails to establish entitlement is supported by substantial evidence, and accordingly, it urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has indicated that he will not file a response brief in the instant appeal.[2]

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

Claimant contends that the administrative law judge erred when he found that the newly submitted evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). The administrative law judge correctly found that the negative x-ray interpretations constitute the vast majority of the x-ray readings and based on the superior qualifications of the readers, he rationally found they outweigh the positive x-ray interpretations, *see Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990). Decision and Order at 12; *Scheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). We affirm, therefore, the administrative law judge's finding that the newly submitted x-ray evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(1).

[2] Inasmuch as the administrative law judge's findings that claimant established 10 years of qualifying coal mine employment and that the newly submitted evidence fails to establish a material change in conditions pursuant to Sections 718.202(a)(2), (3); 718.204(c)(1)-(3), are unchallenged on appeal, they are affirmed. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Coal Co.*, 6 BLR 1-710 (1983).

Claimant also challenges the administrative law judge's finding that the newly submitted evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(4). Claimant asserts that his treating physician, Dr. Johnson, opined the existence of pneumoconiosis, and that his opinion is supported by those of Drs. Clarke and Frtizhand. The administrative law judge permissibly credited the opinions of Drs. Bundy, Fino and Banscomb over those of Drs. Johnson, Clarke and Ftitzhand because he found that the former opinions were better supported by the objective evidence of record, and thereby, better reasoned and documented. Decision and Order at 12-13; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91(1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). Moreover, although the administrative law judge recognized that Dr. Johnson had treated claimant since 1976, he rationally discounted his opinion on the basis that the physician failed to provide an adequate explanation for his findings, especially in light of his finding that the vast majority of the x-ray evidence was negative for pneumoconiosis. Decision and Order at 13; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *see Tussey v. Island Creek Coal Co.*, 942 F.2d 1036, 17 BLR 1-16 (6th Cir. 1993). We affirm, therefore, the administrative law judge's finding that the newly submitted evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(4).

Claimant finally challenges the administrative law judge's finding that the newly submitted evidence fails to establish a total respiratory disability pursuant to Section 718.204(c)(4). Claimant asserts that the administrative law judge erred by failing to give proper weight to the opinion of Dr. Johnson, claimant's treating physician, as supported by those of Drs. Clarke and Fritzhand. We disagree. The administrative law judge correctly found that Drs. Johnson, Clarke and Fritzhand opined claimant was totally disabled. Decision and Order at 14. He then, permissibly found that Dr. Clarke's opinion lacked reliable documentation because the pulmonary function studies he relied upon were significantly lower than all of the other studies of record, and therefore, warranted little weight. Decision and Order 14-15. *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Likewise, the administrative law judge permissibly discounted Dr. Johnson's opinion because he found that the doctor failed to adequately explain his conclusions, and thus, his opinion was unreasoned. Decision and Order at 15. *See Clark, supra; Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*). He then rationally found that Dr. Frtizhand 's opinion was outweighed by the contrary opinions of Drs. Branscomb, Mettu, Broudy and Fino on the basis of their superior qualifications, *see Woodward, supra; Worhach, supra; Trent, supra*, and because their opinions were better supported by the objective evidence of record. *See Justice, supra; Campbell , supra.* We affirm, therefore, the administrative law judge's finding that the newly submitted evidence fails to establish a total respiratory disability pursuant to Section 718.204(c).

Inasmuch as the administrative law judge found that the newly submitted evidence failed to establish at least one element of entitlement that was previously adjudicated against claimant, claimant has failed to establish a material change in condition pursuant to

Sharondale Corp. v. Ross, 42 F.3d 993, 997-98, 19 BLR 2-10, 2-18-19 (6th Cir. 1994). Thus, we affirm, therefore, the administrative law judge's denial of benefits in the instant duplicate claim.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge