BRB No. 97-0745 BLA

JACK HURST	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CARBON RIVER COAL CORPORATION	)	
	)	
and	)	DATE ISSUED:
	)	
THE TRAVELERS 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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

J. Logan Griffith (Wells, Porter, Schmitt & Jones), Paintsville, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-0723) of Administrative Law Judge Donald W. Mosser 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). Claimant filed his claim on May 11, 1993, and the administrative law judge properly considered the claim under the permanent criteria at 20 C.F.R. Part 718. The administrative law judge accepted the parties' stipulation of at least eighteen years of coal mine employment, and found that while claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R.

§§718.202(a)(1) and 718.203, and total disability pursuant to 20 C.F.R. §718.204(c), claimant failed to establish that his disability is due at least in part to his coal mine employment under 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. Claimant appeals, challenging the administrative law judge's finding under 20 C.F.R. §718.204(b). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[1]

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 consistent with applicable law, they are binding upon this Board and must be affirmed. 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).

[1] We affirm the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1), 718.203, and 718.204(c) as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that the administrative law judge's decision is supported by substantial evidence and contains no reversible error. The administrative law judge considered seven medical opinions relevant to 20 C.F.R. §718.204(b), finding the opinions of Drs. Caudill and Baker to be supportive of claimant's burden of proof.[2] Decision and Order (D&O) at 14. Contrary to claimant's argument, the administrative law judge permissibly rejected Dr. Caudill's opinion as being equivocal on the issue of disability causation. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); D&O at 14. Additionally, although the administrative law judge apparently considered Dr. Baker's opinion to be reasoned, he was not obligated to credit Dr. Baker's opinion over the contrary opinions of Drs. Anderson, Vuskovich, Jarboe, Broudy and Fino.[3] D&O at 14. Thus, we affirm the administrative law judge's finding that the weight of the medical opinion evidence failed to establish that claimant's total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). See *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989).

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

SO ORDERED.

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[2] Dr. Caudill testified that claimant has a respiratory disease based on his history of coal mine employment and smoking. Director's Exhibit (DX) 52. Noting that claimant's smoking history stopped twenty years ago, the doctor stated that the most recent lung damage was probably done by coal dust exposure, although he acknowledged that all of claimant's symptoms could be due to smoking. *Id*. Dr. Baker opined that claimant's disabling respiratory impairment is due to his combined twenty year history of dust exposure and twenty pack year history of smoking. DX 15. Dr. Anderson opined that claimant has a combined moderate obstructive and restrictive respiratory impairment due to cardiovascular disease. DXs 36, 37. Drs. Vuskovich, Jarboe and Broudy agree that claimant's disabling respiratory impairment is due to chronic obstructive pulmonary disease due to smoking. DXs 37, 38. Dr. Fino also opined that claimant has a disabling respiratory impairment, but that coal mine dust exposure played no role in the disability. DX 45. The record also includes the opinions of Drs. Wicker and Lane, but these doctors did not address the issue of disability causation. DXs 10, 36.

[3] Claimant argues that the opinions of Drs. Broudy, Anderson and Fino are hostile to the Act. In order for the Board to consider whether a physician's opinion is in conflict with the purpose of the Act that issue must have been raised initially at the trial level. *See Perry v. Director, OWCP*, 9 BLR 1-1 (1986); *Lyon v. Pittsburg & Midway Coal Co.*, 7 BLR 1-199 (1984). In the instant case, we don't reach claimant's argument as it was not raised below.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge