

BRB No. 90-0258 BLA

OLIVER BLANKENSHIP )  
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 Claimant-Petitioner )  
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 v. )  
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 BEECH GROVE COAL SALES, INC. )  
 )  
 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 of Victor J. Chao, Administrative Law Judge, United States Department of Labor.

Don M. Stacy, Beckley, West Virginia, for claimant.

Before: STAGE, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and LAWRENCE, Administrative Law Judge.\*

PER CURIAM:

Claimant appeals the Decision and Order (89-BLA-1091) of Administrative Law Judge Victor J. Chao 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). The administrative law judge reviewed this claim

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with thirty-six years of qualifying coal mine employment. The administrative law judge found that the evidence established the existence of simple pneumoconiosis arising out of coal mine employment under 20 C.F.R. §§718.202(a)(1) and 718.203(b), but was insufficient to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis under 20 C.F.R. §718.304. The administrative law judge further found that claimant failed to establish total disability under 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals, contending that he is entitled to invocation of the presumption under Section 718.304, as the evidence establishes the existence of complicated pneumoconiosis. Claimant additionally maintains that the evidence establishes total disability under Section 718.204(c)(2) and (c)(4). Employer and the Director, Office of Workers' Compensation Programs, have not participated in this appeal.<sup>1</sup>

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<sup>1</sup> The administrative law judge's findings under Sections 718.203(b),

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718.204(c)(1) and (c)(3), and with regard to length of coal mine employment are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

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 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 under 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

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. Although claimant contends that the x-ray interpretations by Drs. Cappiello, Aycoth and Ranavaya establish complicated pneumoconiosis under Section 718.304, such a factual determination is exclusively within the purview of the administrative law judge. See Maypray v. Island Creek

Coal Co., 7 BLR 1-683 (1985). Contrary to claimant's arguments, the administrative law judge acted within his discretion in determining that claimant failed to establish invocation of the irrebuttable presumption under Section 718.304, as the opinions of Drs. Cappiello, Aycoth and Ranavaya were too equivocal to support a finding of complicated pneumoconiosis. See Decision and Order at 2; Director's Exhibit 24; Claimant's Exhibits 2, 3, 6; see generally Justice v. Island Creek Coal Co., 11 BLR 1-91 (1988); Snorton v. Zeigler Coal Co., 9 BLR 1-106 (1986); Carpeta v. Mathies Coal Co., 7 BLR 1-145 (1984). The administrative law judge then considered all of the x-ray evidence of record and the qualifications of the readers, and permissibly relied on Dr. Bassali's interpretation of the most recent film, which was positive for simple pneumoconiosis only, in finding that claimant established the existence of simple pneumoconiosis under Section 718.202(a)(1).<sup>2</sup> See generally Clark v. Karst-Robbins Coal Co., 12 BLR 1-149 (1989). With respect to the issue of total disability, the administrative law judge properly considered all of the relevant evidence of record pursuant to Section 718.204(c)(2) and (c)(4), and acted within his discretion in crediting the contrary probative evidence over the evidence favorable to claimant. Decision and Order at 2-5; see Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); Shedlock v. Bethlehem Mines Corp., 9 BLR 1-195 (1986). The

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<sup>2</sup> Inasmuch as the administrative law judge determined that the record contains no evidence sufficient to support a finding of complicated pneumoconiosis under Section 718.304, the "true doubt" rule is inapplicable. See Decision and Order at 2; Kozele v. Rochester & Pittsburgh Coal Co., 6 BLR 1-378 (1983).

administrative law judge permissibly discredited the opinion of Dr. Cardona, as the documentation upon which the physician relied was not in evidence and he failed to provide an explanation for his conclusions. See Clark, supra at 1-155; see generally Cosalter v. Mathies Coal Co., 6 BLR 1-1182, 1-1184 (1984). Further, the administrative law judge rationally gave less weight to the opinion of Dr. Lee, as the physician's conclusions were based upon unreliable documentation, and thus the opinion was unreasoned. See generally Hutchens v. Director, OWCP, 8 BLR 1-16 (1985); Cooper v. United States Steel Corp., 7 BLR 1-842, 1-844 (1985); Winters v. Director, OWCP, 6 BLR 1-877, 1-881 at n.4 (1984). Finally, the administrative law judge acted within his discretion in finding that the opinion of Dr. Vasudevan was detailed and well reasoned, and thus that the weight of the medical opinions and objective evidence failed to establish total disability under Section 718.204(c).<sup>3</sup> See generally Fields, supra at 1-22; Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). Inasmuch as claimant has failed to establish a requisite element of entitlement under Part 718, i.e. total disability, we affirm the administrative law judge's finding that claimant is not entitled to benefits. See Trent, supra.

Accordingly, the administrative law judge's Decision and Order denying

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<sup>3</sup> Claimant additionally contends that, in weighing the medical opinions under Section 718.204(c)(4), the administrative law judge erred in failing to apply the "true doubt" rule. However, as the administrative law judge did not find that the conflicting opinions were equally probative, the "true doubt" rule is inapplicable. See Stanford v. Director, OWCP, 7 BLR 1-541 (1984).

benefits is affirmed.

SO ORDERED.

BETTY J. STAGE, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

LEONARD N. LAWRENCE  
Administrative Law Judge