BRB No. 02-0139 BLA

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| DONALD L. MORELAND | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| GRAFTON COAL COMPANY | ) | DATE ISSUED: |
| | ) | |
| and | ) | |
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| WEST VIRGINIA COAL-WORKERS' PNEUMOCONIOSIS FUND | ) | |
| | ) | |
| 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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Jack R. Turney, Oakland, Maryland, for claimant.

Robert Weinberger (West Virginia Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (00-BLA-0521) of Administrative Law Judge Pamela Lakes Wood 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] The instant case involves a duplicate claim filed on March 16, 1999.[2] The administrative law judge found that the evidence was sufficient to establish a

[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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2]Claimant initially filed a claim for benefits on June 11, 1982. Director's Exhibit 28. The district director denied the claim on March 14, 1983. *Id.* There is no indication that claimant took any further action in regard to his 1982 claim.

Claimant filed a second claim on August 27, 1991. Director's Exhibit 29. The district director denied the claim on February 21, 1992. *Id.* There is no indication that claimant took any further action in regard to his 1991 claim.

material change in conditions pursuant to 20 C.F.R. §725.309 (2000). The administrative law judge, therefore, considered claimant's 1999 claim on the merits. After noting the parties' stipulation to seventeen years of coal mine employment, the administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R §718.202(a). The administrative law judge also found that claimant was entitled to a presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge, however, found that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv).[3] Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish total disability. Carrier, West Virginia Coal Workers' Pneumoconiosis Fund responds in support of the administrative law judge's denial of benefits. Neither employer nor the Director, Office of Workers' Compensation Programs, has filed a response brief.[4]

The Board must affirm the findings of the administrative law judge if they are

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Claimant filed a third claim on March 16, 1999. Director's Exhibit 1.

[3]The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now found at 20 C.F.R. §718.204(b) while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

[4]Inasmuch as no party challenges the administrative law judge's finding that the evidence is sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000) or the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

supported by substantial evidence, are rational, and are in accordance with applicable 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).

Inasmuch as no party challenges the administrative law judge's findings that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (b)(2)(ii) and (b)(2)(iii), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant generally contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish total disability. In his consideration of whether the medical opinion evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge discredited Dr. Ranjithan's opinion that claimant's "blood gases [were] consistent with [a] severe pulmonary problem"[5]

[5]Dr. Ranjithan's January 24, 2000 report is one paragraph in length. It provides in full that:

> [Claimant] worked in the coal mines for over 17 years. He was sent to me by Dr. Johnson, from Oakland, with increasing pedal edema. It was my opinion that [claimant] has congestive heart failure or more specific cor pulmonale, which most likely is the result of interstitial lung disease. Patient has documented chronic interstitial lung disease on chest X-rays and his blood gases are consistent with severe pulmonary problem, with a pO2 on room air at this time. As a result of his pneumoconiosis patient has right heart failure causing pedal edema which necessitates use of significant amount of diuretics

because the doctor was unaware of the results of a subsequent arterial blood gas study that produced higher values. Decision and Order at 17-18; Claimant's Exhibit 1. We need not address the administrative law judge's basis for discrediting Dr. Ranjithan's opinion. Because Dr. Ranjithan failed to opine that claimant was totally disabled or otherwise address the severity of his impairment in such a way as to permit the administrative law judge to infer that claimant was totally disabled, Dr. Ranjithan's opinion cannot constitute probative evidence of total disability. *See Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*).

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> including Lasix 80 mg qd, Amiloride 5 mg qd. Both of these are causing the patient to have slight elevation in his creatinine.

Claimant's Exhibit 1.

The administrative law judge properly found that Dr. Sagin's opinion that claimant was mildly impaired from interstitial lung disease was insufficient to support a finding of a totally disabling pulmonary impairment.[6] *See Moore v. Hobet Mining & Construction Co.*, 6 BLR 1-706 (1983); Decision and Order at 18; Director's Exhibit 12. The administrative law judge also properly found that Dr. Johnson's opinion that claimant was totally disabled was not sufficiently reasoned.[7] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order18; Director's Exhibit 24; Claimant's Exhibit 2. The record does not contain any other medical opinion evidence supportive of a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Claimant argues that Dr. Renn "shows nothing on the record to indicate he knows what a bulldozer operator on a coal-strip job does." Claimant's Brief at 2. In a report dated

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[6]It is the miner's burden to establish the exertional requirements of his usual coal mine employment in order to provide a basis of comparison for the administrative law judge to evaluate a medical assessment of disability and reach a conclusion regarding total disability. *McMath v. Director, OWCP*, 12 BLR 1-6 (1988)*; Cregger v. U.S. Steel Corp.*, 6 BLR 1-1219 (1984). In the instant case, claimant testified that he last worked as a bulldozer operator at a strip mine. Transcript at 16. When asked to describe more precisely what he did, claimant stated that:

> You take the – off down to the just the coal, clean the coal up so you can load it.

Transcript at 16.

[7]Dr. Johnson's September 13, 1999 letter is addressed to "Whom It May Concern." Director's Exhibit 34. It provides in full that:

> This is to confirm that [claimant] has pneumoconiosis (interstitial lung disease - black lung) confirmed by chest X-ray, pulmonary function tests and arterial blood gases. The lung disease has also contributed to [claimant's] congestive heart failure. His condition is permanent.

Director's Exhibit 24.

In a subsequent letter dated February 15, 2000, Dr. Johnson opined, without any explanation, that claimant "has black lung (interstitial lung disease) that renders him totally and permanently disabled." Claimant's Exhibit 2.

November 6, 2000, Dr. Renn opined that from a respiratory standpoint, claimant was capable of performing his former coal mining job of bulldozer operator or any similar work effort. Employer's Exhibit 1. Contrary to claimant's contention, Dr. Renn possessed an adequate knowledge of the exertional requirements of claimant's last coal mine employment. In the "Occupational History" portion of his report, Dr. Renn stated that:

> From 1954 until retiring in 1972 owing to exertional dyspnea and wheezing [claimant] worked in surface mines. He was a bulldozer operator but occasionally operated an endloader and was oiler on both the shovel and the dragline.
>
> [Claimant] believes that the hardest part of the job of bulldozer operator to have been shoveling mud from the tracks. He believes the heaviest part of the job to have been lifting parts when repairing the bulldozer. The heaviest lifting performed by himself was a five gallon can of oil.

Employer's Exhibit 1.

We further note that the administrative law judge permissibly found that Dr. Renn's opinion that claimant was not totally disabled was entitled to additional weight based upon his superior qualifications.[8] *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Director's Exhibit 24. Moreover, because the administrative law judge properly discredited all of the evidence of record supportive of a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge's error, if any, in his consideration of Dr. Renn's opinion is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[8]Dr. Renn is Board-certified in Internal Medicine and Pulmonary Disease. Employer's Exhibit 1.

We also reject claimant's contention that the administrative law judge improperly discounted the testimony of claimant's wife and daughter. Because the administrative law judge found no credible medical evidence supportive of a finding of total disability, he was not required to consider lay testimony from claimant's wife and daughter.[9] *See* 20 C.F.R. §718.204(d)(2); *Matteo v. Director, OWCP*, 8 BLR 1-200 (1985).

Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish total disability, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee*, *supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[9]The record contains an undated "Closing Statement" from Donna Chunga. At the hearing, Ms. Chunga testified that she was claimant's daughter. Transcript at 40. Although Ms. Chunga testified that she is a registered nurse, there is no indication that she is a medical doctor. *Id.*