BRB No. 02-0151 BLA

WILLIAM C. JOHNSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
U.S. STEEL MINING COMPANY, LLC	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS= COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

James M. Phemister (Legal Practice Clinic, Washington & Lee University School of Law), Lexington, Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay, Casto & Chaney, PLLC), Charleston, West Virginia, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (98-BLA-51) of Administrative Law Judge Gerald M. Tierney rendered 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 administrative law judge found

[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, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

thirty-seven years of coal mine employment established and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 2. The administrative law judge concluded that the evidence of record established the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a), 718.203(b) and total disability due to pneumoconiosis pursuant to Section 718.204(b)(2)(iv), (c). Benefits were, accordingly, awarded.

On appeal, employer contends that the administrative law judge erred in finding that claimant was totally disabled pursuant to Section 718.204(b)(2)(iv). Claimant responds, urging affirmance of the award of benefits. 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 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 establish 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 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*).

Employer contends that the administrative law judge erred in his weighing of the medical opinion of evidence pursuant to Section 718.204(b)(2)(iv).[2] Specifically, employer contends that the administrative law judge erred in according greater

[2] Dr. Cohen found that claimant=s respiratory impairment was significant enough to prevent claimant from performing his last coal mine job as a jacksetter, Claimant=s Exhibit 1; Dr. Vasudevan found no impairment, Director=s Exhibit 15; and Dr. Castle opined that claimant retained the respiratory capacity to perform his usual coal mining duties. Employer=s Exhibit 1.

weight to the opinion of Dr. Cohen than to the opinions of Drs. Vasudevan and Castle.

Contrary to employer=s argument, however, the administrative law judge rationally accorded greater weight to Dr. Cohen=s opinion that claimant was unable to perform his usual coal mine employment, than to the contrary opinions of Drs. Vasudevan and Castle, because Dr. Vasudevan failed to provide a rationale for his conclusions, and both Drs. Vasudevan and Castle failed to consider the exertional requirements of claimant=s last coal mine employment as a jacksetter, while Dr. Cohen considered the exertional requirements of claimant=s last coal mine employment and also considered the most recent pulmonary function study of record. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Marsiglio v. Director, OWCP*, 8 BLR 1-190 (1985); *see Eagle v. Armco Inc.*, 943 F.2d 509, 15 BLR 2-201 (4th Cir. 1991); *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991). Further, contrary to employer=s contention, the administrative law judge is not required to accord determinative weight to the opinion of an examining or treating physician where he finds the opinion unreasoned. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1988); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Hall v. Director, OWCP*, 6 BLR 1-1306 (1984). Additionally, although employer contends that the administrative law judge erred in failing to give Dr. Vasudevan=s opinion the special consideration it deserved as the opinion of claimant=s treating physician, a fact to which claimant testified, the administrative law judge reasonably determined that the opinion did not warrant special consideration since the record did not provide any information concerning the length of time Dr. Vasudevan treated claimant. This was proper. *Revnack v. Director, OWCP*, 7 BLR 1-771, 773-774 (1985). Moreover, although all three physicians are board-certified pulmonary specialists, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Cohen based on his extensive experience in the area of coal workers= pneumoconiosis. Claimant=s Exhibit 1; *Hicks*, *supra*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). We therefore affirm the administrative law judge=s finding that the medical opinion evidence of record, considered in conjunction with the pulmonary function study and blood gas study evidence of record, was sufficient

to establish total disability, an essential element of entitlement.[3] *See Clark*, *supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff=d on recon.*, 9 BLR 1-236 (1987)(*en banc*); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985).

[3] The administrative law judge=s findings pursuant to 20 C.F.R. ' '718.202(a) and 718.204(b)(2)(i)-(iii) and 718.204(c) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Accordingly, the administrative law judge=s Decision and Order - Awarding Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge