BRB No. 02-0807 BLA

LEONARD E. SARGENT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BULLION HOLLOW ENTERPRISES, INCORPORATED	)	DATE ISSUED: 07/25/2003
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest		

Appeal of the Decision and Order on Remand of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Leonard E. Sargent, Big Stone Gap, Virginia, *pro se*.[1]

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer.

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

PER CURIAM:

[1]Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested on behalf of claimant that the Board review the administrative law judge=s decision. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Claimant, representing himself, appeals the Decision and Order on Remand (98-BLA-0251) 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).[2] This case, involving a duplicate claim filed on May 9, 1997,[3] is before the Board for the third time.

In its most recent consideration of the this case,[4] the Board, by Decision and Order dated April 1, 2002, vacated the administrative law judge=s findings regarding a material change in conditions pursuant to 20 C.F.R. ' 725.309 (2000) and remanded the case for reconsideration in light of the standard adopted by the Fourth Circuit in *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996). *Sargent v. Bullion Hollow Enterprises, Inc.*, BRB No. 01-0492 BLA (Apr. 1, 2002) (unpublished). If, on

---

[2] 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, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3] The relevant procedural history of this case is as follows: Claimant initially filed a claim for benefits with the Social Security Administration (SSA) on June 15, 1973. Director=s Exhibit 33. The SSA denied the claim on August 13, 1973 and May 9, 1979. *Id.* The Department of Labor denied the claim on January 7, 1980. *Id.* There is no indication that claimant took any further action in regard to his 1973 claim.

The miner filed a second claim on September 12, 1991. Director=s Exhibit 32. By Decision and Order dated June 30, 1994, Administrative Law Judge George A. Fath found that the evidence was sufficient to establish a material change in conditions pursuant to 20 C.F.R. ' 725.309 (2000). *Id.* Judge Fath, therefore, considered claimant=s 1991 claim on the merits. Judge Fath found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(1)-(4) (2000). *Id.* Accordingly, Judge Fath denied benefits. *Id.* By Decision and Order dated September 26, 1995, the Board affirmed Judge Fath=s findings that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(1)-(4) (2000). *Sargent v. Bullion Hollow Enterprises, Inc.*, BRB No. 94-3840 BLA (Sept. 26, 1995) (unpublished). The Board, therefore, affirmed Judge Fath=s denial of benefits. *Id.* There is no indication that claimant took any further action in regard to his 1991 claim.

Claimant filed a third claim on May 9, 1997. Director=s Exhibit 1.

[4] For a complete procedural history of this case, *see Sargent v. Bullion Hollow Enterprises, Inc.*, BRB No. 99-0668 BLA (Sept. 29, 2000) (unpublished).

remand, the administrative law judge found that the newly submitted evidence was sufficient to establish a material change in conditions, the Board instructed the administrative law judge that she must then consider the merits of the claim. *Id.*

On remand for the second time, the administrative law judge found that the newly submitted medical opinion evidence was Ain equipoise@ on the issue of the existence of pneumoconiosis. The administrative law judge, thus, found that the newly submitted medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. '718.202(a)(4). The administrative law judge, therefore, found that the evidence was insufficient to establish a material change in conditions pursuant to 20 C.F.R. '725.309 (2000). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge=s denial of benefits. The Director, Office of Workers= Compensation Programs, has not filed a response.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are 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).

Section 725.309 (2000) provides that a duplicate claim is subject to automatic denial on the basis of the prior denial, unless there is a determination of a material change in conditions since the denial of the prior claim.[5] 20 C.F.R. '725.309(d) (2000). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that in assessing whether a material change in conditions has been established, an administrative law judge must consider all of the new evidence, favorable and unfavorable, and determine whether the miner has proven at least one of the elements of entitlement previously adjudicated against him. *Rutter, supra*. Administrative Law Judge George A. Fath denied claimant=s 1991 claim because he found that the evidence was insufficient to establish that claimant suffered from pneumoconiosis, a finding that was affirmed by the Board. *See* Director=s Exhibit 32. Consequently, in order to establish a material change in conditions pursuant to 20 C.F.R. '725.309 (2000), the newly submitted evidence must support a finding of pneumoconiosis pursuant to 20 C.F.R. '718.202(a).

[5]Although Section 725.309 has been revised, these revisions apply only to claims filed after January 19, 2001.

The Board previously affirmed the administrative law judge=s findings that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(1)-(3). *See Sargent v. Bullion Hollow Enterprises, Inc.*, BRB No. 99-0668 BLA (Sept. 29, 2000) (unpublished). Consequently, the administrative law judge properly considered whether the newly submitted medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(4).

The record contains newly submitted medical opinions by Drs. Paranthaman, Dahhan and Castle. The opinions of Drs. Dahhan and Castle do not support a finding of pneumoconiosis.[6] Director=s Exhibit 25; Employer=s Exhibits 1, 3, 6. However, in a report dated June 10, 1997, Dr. Paranthaman diagnosed chronic obstructive pulmonary disease, which he attributed to the Acombined effect of cigarette smoking (25 pack years) and coal dust exposure for 35 years, if documented.@ Director=s Exhibit 10. Dr. Paranthaman=s diagnosis, if credited, could be sufficient to establish the existence of Alegal@ pneumoconiosis. *See* 20 C.F.R. ' 718.201(a)(2).[7]

The administrative law judge, however, found that Dr. Paranthaman=s opinion that claimant=s chronic obstructive pulmonary disease was attributable to cigarette smoking and coal dust exposure was Aessentially conclusory in nature, apart from the reference to length of coal mine employment and smoking historyY.@ 2002 Decision and Order on Remand at 6. Thus, the administrative law judge found that Dr. Paranthaman=s diagnosis of Alegal@ pneumoconiosis was not sufficiently reasoned since he provided no explanation for attributing claimant=s chronic obstructive pulmonary disease in part to his coal dust exposure. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

Because the administrative law judge properly discredited Dr. Paranthaman=s opinion, the only newly submitted medical opinion supportive of a finding of pneumoconiosis, we need not address the administrative law judge=s reasons for discrediting

---

[6] In a report dated September 26, 1997, Dr. Dahhan found insufficient objective evidence to justify a diagnosis of coal workers= pneumoconiosis. Director=s Exhibit 25. Dr. Dahhan diagnosed chronic obstructive lung disease due to cigarette smoking. *Id.*; *see also* Employer=s Exhibits 3, 6. In a report dated February 24, 1998, Dr. Castle opined that claimant does not suffer from coal workers= pneumoconiosis. Employer=s Exhibit 1. Dr. Sargent further opined that claimant did not suffer from a chronic dust disease of the lungs, or the sequelae thereof, that has been caused by, contributed to, or substantially aggravated by coal mine dust exposure. *Id.* Dr. Castle opined that claimant suffered from tobacco smoke induced chronic obstructive pulmonary disease. *Id.*

[7] ALegal pneumoconiosis@ includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. ' 718.201(a)(2).

the opinions of Drs. Dahhan and Castle. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). We, therefore, affirm the administrative law judge=s finding that the newly submitted medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(4).

In light of our affirmance of the administrative law judge=s findings that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(1)-(4),[8] we affirm the administrative law judge=s finding that the evidence is insufficient to establish a material change in conditions pursuant to 20 C.F.R. ' 725.309 (2000). *Rutter, supra*.

[8] The administrative law judge did not weigh all of the relevant newly submitted evidence together pursuant to 20 C.F.R. ' 718.202(a). In *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction the instant case arises, held that although Section 718.202(a) enumerates four distinct methods of establishing pneumoconiosis, all types of relevant evidence must be weighed together to determine whether a miner suffers from the disease. *See also Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). However, since the administrative law judge, in this case, properly found that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(1)-(4), his findings conform to the Fourth Circuit holding in *Compton*.

Accordingly, the administrative law judge's 2002 Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

_____
PETER A. GABAUER, JR.
Administrative Appeals Judge