BRB No. 05-0178 BLA

RONNIE LEE SMITH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELKAY MINING COMPANY	)	DATE ISSUED: 07/26/2005
	)	
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 Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Ronnie Lee Smith, Amherstdale, West Virginia, *pro se*.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits of Administrative Law Judge Richard A. Morgan 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 found that the claim constitutes a duplicate claim pursuant to 20 C.F.R. §725.309,[1] and that

[1] Claimant initially filed a claim for benefits on September 28, 1994, which was denied by the Department of Labor on January 18, 1995, on the basis of claimant having failed to establish any of the elements of entitlement, *i.e.* the existence of pneumoconiosis, that claimant's pneumoconiosis arose out of coal mine, and that claimant was totally disabled due to pneumoconiosis. Director's Exhibit 25. Claimant

claimant established a coal mine employment history of at least nineteen years. Decision and Order at 2-3, 21-22. Considering the evidence of record, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or the presence of a totally disabling respiratory impairment due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Decision and Order at 11, 14. Benefits were, accordingly, denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer, in response, urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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.[2] In considering whether claimant established the existence of pneumoconiosis pursuant to Section 718.202(a), the administrative law judge, considering the relevant evidence of record, together, *i.e.*, x-rays and medical opinions, concluded that the existence of pneumoconiosis was not established. Considering the thirty nine readings of the six rays of record,[3] the administrative law judge determined

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took no further action until the filing of this claim on August 27, 2000. On September 28, 2004, the administrative law judge issued the Decision and Order Denying Benefits from which claimant now appeals.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was last employed in the coal mine industry in the state of West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

[3] These x-rays were taken on November 18, 1994, May 30, 2000, November 29, 2000, October 7, 2001, October 19, 2002 and April 23, 2003. Director's Exhibits 15, 16,

that the weight of these readings, which consisted of twenty-four negative readings by B-readers and/or board-certified radiologists,[4] and fifteen positive readings by physicians with similar qualifications, led to a finding that of the six x-ray films of record, two were negative for the existence of pneumoconiosis, one was positive, one was not properly classified, and two were in equipoise. Decision and Order at 25. The administrative law judge then determined that the x-ray evidence, considered in conjunction with the medical opinion evidence, did not support a finding of the existence of pneumoconiosis.[5] *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

In considering the medical opinion evidence of record, the administrative law judge rationally found that the reports of Drs. Castle, Hippensteel and Rosenberg, all of whom opined that claimant did not suffer from pneumoconiosis or any disease arising out of coal dust exposure, Employer's Exhibits 5, 9, 12, 18, 19, 23, 25, 27, were entitled to the greatest weight based on the qualifications of these physicians and the fact that they provided the best-reasoned opinions of record. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996) (credibility of medical opinion is for administrative law judge to determine); *see also Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge also rationally found that the reports of Drs. Ranavaya and Baker, both of whom opined that claimant suffered from pneumoconiosis, Director's Exhibits 12, 25; Claimant's Exhibit 1, and the report of Dr. Loudon, who opined that claimant did not suffer from the disease, Employer's Exhibits 5, 23, 27, were entitled to little weight as these physicians did not fully explain the conclusions they reached and

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21-23; Employer's Exhibits 1, 2, 4, 6, 7, 11, 13-16, 21, 22, 26; Claimant's Exhibits 1 3-13.

[4] A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16 , 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

[5] The administrative law judge also found, correctly, that claimant was unable to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (3) as there was no autopsy or biopsy evidence or evidence of complicated pneumoconiosis in this living miner's claim filed on August 27, 2000. 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306.

did not provide opinions as detailed and reasoned as those of Drs. Castle, Hippensteel and Rosenberg. *Hicks*, 138 F.3d 524, 21 BLR 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269; *Stiltner*, 86 F.3d 337, 20 BLR 2-246; *see also Underwood*, 105 F.3d 946, 21 BLR 2-23. Further the administrative law judge noted that Dr. Bellam was claimant's treating physician, but found that his opinion that claimant suffered from coal workers' pneumoconiosis and chronic obstructive pulmonary disease, Claimant's Exhibit 13, was not entitled to superior weight under 20 C.F.R. §718.104,[6] as he failed to fully account for claimant's lengthy smoking history and did not explain the basis for his conclusions. The administrative law judge thus rationally found that Dr. Bellam's treatment records and the "duration of his doctor/patient relationship with [c]laimant provide no special insight into [c]laimant's pulmonary condition warranting special consideration of his conclusion." Decision and Order at 29; 20 C.F.R. §718.104(d); *see Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Hicks*, 138 F.3d 524, 21 BLR 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269; *see also Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985); *Rickey v. Director, OWCP*, 7 BLR 1-106 (1984). Lastly, the administrative law judge permissibly accorded little weight to the opinion of Dr. Zaldivar, Director's Exhibit 23; Employer's Exhibits 8, 21, 28, as he initially opined that claimant suffered from coal workers' pneumoconiosis, but then concluded that claimant's condition could have merely been smoker's bronchitis, and did not clearly explain whether claimant's emphysema resulted from smoking or coal dust exposure. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-191 (1988); *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985). We hold, therefore, that the administrative law judge has provided affirmable bases for concluding that claimant has failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *See Compton*, 211 F.3d 203, 22 BLR 2-162.

[6] Section 718.104(d) provides, in pertinent part, that the administrative law judge must give consideration to the relationship between the miner and any treating physician whose report is admitted into the record, considering the following factors in weighing the opinion of the treating physician:

1) Nature of relationship.
2) Duration of relationship.
3) Frequency of treatment.
4) Extent of treatment.

The regulation also requires the administrative law judge to consider the treating physician's opinion "in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5).

Because the administrative law judge has addressed the relevant evidence of record and has rationally concluded that such evidence fails to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, *see Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1 (1986) (*en banc*), the administrative law judge's denial of benefits must be affirmed.[7]

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

[7] In view of the fact that the administrative law judge considered the evidence of record in finding that claimant established the existence of pneumoconiosis, we need not address the duplicate claim issue at Section 725.309, or the administrative law judge's total disability findings. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).