BRB No. 07-0881 BLA

J. O. Claimant-Petitioner v. ISLAND CREEK COAL COMPANY and WESTMORELAND COAL COMPANY c/o ACORDIA EMPLOYERS' SERVICE Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 07/16/2008 DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

J. Todd Ross (Ross & Arthur), Kingsport, Tennessee, for claimant.

Kathy L. Snyder and Wendy G. Adkins (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (2005-BLA-5992) of Administrative Law Judge Larry W. Price (the administrative law judge) 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). The administrative law

judge credited claimant with twenty-eight years of coal mine employment, as stipulated by the parties, and adjudicated this claim, filed on August 9, 2004, pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in not finding that the medical opinion evidence established legal pneumoconiosis at Section 718.202(a)(4).[1] Employer responds, urging affirmance of the administrative law judge's Decision and Order denying benefits. The Director, Office of Workers' Compensation Programs, has declined to respond in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[2] 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

At Section 718.202(a)(4), claimant contends that the administrative law judge incorrectly evaluated the opinions of Drs. Smiddy, Rasmussen, and Hippensteel on the issue of legal pneumoconiosis. Claimant first contends that the administrative law judge erred in not finding legal pneumoconiosis established based on Dr. Smiddy's opinion as Dr. Smiddy indicated that claimant's chronic obstructive pulmonary disease was due to

[1] The administrative law judge's finding that claimant failed to establish clinical pneumoconiosis by x-ray, biopsy and medical opinion evidence at 20 C.F.R. §718.202(a)(1), (2) and (4) is affirmed, as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Likewise, the administrative law judge's finding that pneumoconiosis was not established at 20 C.F.R. §718.202(a)(3), as the presumptions contained therein were inapplicable, is also affirmed, as unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner was employed in the coal mining industry in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 5.

both coal mine employment and smoking. In addition, claimant contends that Dr. Smiddy's opinion should have been given controlling weight because he was claimant's treating physician.

The administrative law judge found that Dr. Smiddy's opinion was not probative on the issue of legal pneumoconiosis because a review of Dr. Smiddy's treatment notes did not support Dr. Smiddy's conclusory statement that claimant's chronic obstructive pulmonary disease was due to coal mine employment and smoking. Instead the administrative law judge noted that Dr. Smiddy's treatment notes consistently showed that while he attributed claimant's clinical pneumoconiosis to coal mine employment, he attributed claimant's chronic obstructive pulmonary disease solely to smoking, not coal mine employment. The administrative law judge, therefore, properly found that Dr. Smiddy's opinion did not support a finding of legal pneumoconiosis. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Further, the administrative law judge acknowledged that Dr. Smiddy was a treating physician and that, in appropriate cases, the opinions of treating physicians can be given controlling weight. 20 C.F.R. §718.104(d). The administrative law judge, however, properly found that Dr. Smiddy's opinion was not entitled to controlling weight in this case because his opinion was not sufficiently reasoned. 20 C.F.R. §718.104(d)(5); *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003).

Claimant next contends that Dr. Rasmussen found that claimant had a disabling lung disease due to coal mine employment and smoking. The administrative law judge, however, found Dr. Rasmussen opinion "to be of little probative value" because it was based on generalities. Specifically, the administrative law judge noted that Dr. Rasmussen concluded that, while smoking and coal mine employment were contributing causes of claimant's chronic obstructive pulmonary disease, the only explanation he gave to support this finding was that smoking and coal mine employment caused identical forms of chronic obstructive pulmonary disease. Because this was the extent of the doctor's explanation as to how smoking and coal mine employment caused claimant's chronic obstructive pulmonary disease, the administrative law judge found that it was based on generalities since this conclusion could be made in any case where a miner had chronic obstructive pulmonary disease. Decision and Order at 18. Further, a review of Dr. Rasmussen's opinion reveals that, while he attached the results of various tests performed by claimant to his report, he did not discuss how the results of these tests supported his finding. Consequently, we conclude that the administrative law judge properly found that Dr. Rasmussen's opinion was of little probative value because it was based on generalities, rather than on claimant's specific condition. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Knizer v. Bethlehem Mines*

Corp., 8 BLR 1-51 (1985); *see also Fuller v. Gibraltar Corp.*, 6 BLR 1-1292 (1984); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983).

The administrative law judge's finding that claimant failed to establish legal pneumoconiosis by the medical opinion evidence at Section 718.202(a)(4) is, therefore, affirmed. Because we affirm the administrative law judge's finding that the opinions of Drs. Smiddy and Rasmussen failed to establish legal pneumoconiosis, we need not reach claimant's argument that the administrative law judge erred in crediting Dr. Hippensteel's finding that claimant did not have legal pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

In light of the foregoing, the administrative law judge's finding that claimant failed to establish pneumoconiosis at Section 718.202(a), an essential element of entitlement, is affirmed. *Anderson*, 12 BLR at 1-112; *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

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

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge