BRB No. 98-1440 BLA

VERTIE BELCHER (On behalf of CHARLES L. BELCHER, deceased)	)	
Claimant-Petitoner	)	
v.	)	DATE ISSUED:
ROBINSON-PHILLIPS COAL COMPANY	)	
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 of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

John P. Scherer (File, Payne, Scherer, & File), Beckley, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant[1] appeals the Decision and Order (98-BLA-0085) of Administrative

[1] Claimant is Vertie Belcher, widow of Charles L. Belcher, the miner, whose claim for benefits filed on November 12, 1996 was pending at the time of his death on May

Law Judge Daniel F. Sutton 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). The administrative law judge credited the deceased miner with at least nineteen years of coal mine employment pursuant to the parties' stipulation and found that the miner's current claim was a request for modification of his previously denied claim pursuant to 20 C.F.R. §725.310.[2] Considering the entire record, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis or total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.204. Accordingly, he denied benefits.

On appeal, claimant contends that the administrative law judge erred by relying on medical opinions that merit no weight as a matter of law, and by crediting

---

9, 1997. Director's Exhibits 1, 29.

[2] Two previous claims filed by the miner were denied, the most recent denial being on November 6, 1995. Director's Exhibits 36, 37. The miner filed the current claim more than one year after that date, on November 12, 1996, but the administrative law judge nevertheless considered his claim a timely request for modification on the grounds that 20 C.F.R. §725.311(c) adds seven days to any deadline for responding to a notice served by mail, such as the district director's November 6, 1995 denial letter. Decision and Order at 5; 20 C.F.R. §§725.311(c), 725.309(d), 725.310. The parties do not challenge the administrative law judge's procedural analysis on appeal.

medical opinions that the miner could perform his usual coal mine employment. Employer responds, urging affirmance, and the Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.[3]

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

To be entitled to benefits under 20 C.F.R. Part 718, a miner must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. *See* 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 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Upon consideration of the administrative law judge's Decision and Order, the administrative record as a whole, and the pleadings submitted by the parties, we conclude that the Decision and Order is supported by substantial evidence, contains no reversible error, and accords with applicable law. Accordingly, we affirm the Decision and Order denying benefits.

[3] We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(1)-(3) and 718.204(c)(1)-(3). *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co*., 6 BLR 1-710 (1983).

Claimant challenges the administrative law judge's finding that she failed to establish that the miner suffered from pneumoconiosis pursuant to Section 718.202(a)(4). In this regard, claimant avers that the medical opinions credited by the administrative law judge are critically flawed. Claimant's Brief at 5-7. The administrative law judge evaluated the opinions of Drs. Rasmussen (Director's Exhibit 8, Claimant's Exhibit 1), Hippensteel (Director's Exhibit 34, Employer's Exhibit 20), and Fino (Employer's Exhibit 17).[4]

Dr. Rasmussen examined the miner on December 16, 1996 and conducted arterial blood gas testing, a pulmonary function study, diffusion capacity testing, and had an x-ray interpreted. Director's Exhibit 8. Dr. Rasumussen reported a positive x-ray and stated that the miner's pulmonary function study revealed a mild, irreversible obstructive ventilatory impairment, and his blood gas study showed an impairment in oxygen transfer with exercise. Reporting also a marked reduction in diffusing capacity and the results of an electrocardiogram, Dr. Rasmussen concluded that the miner's exercise and work capacity were markedly impaired, "with elements of both pulmonary and cardiac disease being present." Director's Exhibit 8. Dr. Rasmussen diagnosed coal workers' pneumoconiosis, chronic bronchitis, atherosclerotic heart disease, and congestive heart failure.

[4] The administrative law judge also discussed the two examination reports prepared by Dr. Ranavaya in the miner's prior claims. Decision and Order at 8-9; Director's Exhibits 36, 37. Claimant does not challenge the administrative law judge's apparent determination to focus primarily on the reports submitted with the miner's current claim when making his finding at Section 718.202(a)(4).

Dr. Hippensteel examined and tested the miner on April 9, 1997 and reviewed medical records. Director's Exhibit 34. In contrast to Dr. Rasmussen, Dr. Hippensteel reported an x-ray with markings consistent with cardiac-induced vascular congestion, a mild reversible ventilatory obstruction on pulmonary function testing, no impairment in blood gas exchange at rest or with exercise, and only a very mildly reduced diffusion capacity. Dr. Hippensteel concluded that these findings weighed against a diagnosis of pneumoconiosis, but were consistent with non-pulmonary problems related to coronary artery disease. After reviewing medical records, including Dr. Rasmussen's report and several hospitalization reports,[5] Dr. Hippensteel concluded that the miner did not have pneumoconiosis but suffered from severe coronary artery disease and related symptoms apparently aggravated by cigarette smoking. Dr. Fino reviewed the medical evidence of record and reached essentially the same conclusion. Employer's Exhibit 17.

After thoroughly discussing these reports, the administrative law judge found Dr. Hippensteel's conclusions, as corroborated by those of Dr. Fino, to be better reasoned, more thoroughly and persuasively explained, and better supported by the objective medical data of record than those of Dr. Rasmussen. Decision and Order at 12-13; *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); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149 (1989)(*en banc*). Claimant asserts that the opinions of Drs. Hippensteel and Fino merited no weight. However, we find no support in the record for her contention that Drs. Hippensteel and Fino based their opinions solely upon negative x-ray readings and mechanically assumed that the presence of heart disease ruled out the possible existence of pneumoconiosis. Additionally, review of the record indicates that, contrary to claimant's contention, Drs. Hippensteel and Fino did not assume that pneumoconiosis never causes obstruction or that pneumoconiosis is not progressive. Director's Exhibit 34; Employer's Exhibits 17, 20; *see Stiltner v. Island Creek Coal Co*., 86 F.3d 337, 341, 20 BLR 2-246, 2-254-55 (4th Cir. 1996). The

[5] These reports detail multiple hospitalizations for heart problems, but do not contain a diagnosis of pneumoconiosis. Employer's Exhibits 5-13. According to these records, the miner had two heart attacks and required two quadruple coronary artery bypass graft surgeries, and two surgeries to bypass blockages in the arteries to his abdomen and legs. *Id*.

administrative law judge was entitled to defer to the medical opinion evidence which he found was better explained and better supported by the objective clinical evidence of record over the contrary opinion of Dr. Rasmussen, *see Hicks, supra*; *Akers, supra*; *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983), and substantial evidence supports his finding. Therefore, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(4) that "a preponderance of the medical opinion evidence . . . does not establish the presence of pneumoconiosis . . . ." Decision and Order at 13.

Pursuant to Section 718.204(c)(4), claimant asserts that the administrative law judge erred by relying on the opinions of Drs. Hippensteel and Fino that the miner's mild, reversible obstructive impairment would not have prevented him from performing his usual coal mine employment. Claimant's Brief at 8-9. Review of the record indicates that both physicians knew the specific tasks and duties required by the miner's job as an underground surveyor.[6] Director's Exhibit 34 at 1, 6, 9; Employer's Exhibit 17 at 6. Dr. Hippensteel reported that, from a respiratory standpoint, the miner would not have been prevented from returning to "his prior job in the coal mines," Director's Exhibit 34 at 3, and Dr. Fino indicated that the miner's "pulmonary impairment would not have prevented him from returning to his last mining job or a job requiring similar effort." Employer's Exhibit 17 at 11.

The administrative law judge deferred to their assessments as better explained and supported by the objective evidence than Dr. Rasmussen's opinion that the miner was totally disabled by significant chronic lung disease. Decision and Order at 15; Director's Exhibit 8; *see Hicks, supra*; *Akers, supra*. Claimant asserts that the administrative law judge should have independently assessed the miner's ability to perform his usual coal mine employment instead of accepting the opinions of Drs. Hippensteel and Fino. Claimant's Brief at 8. However, because Drs. Hippensteel and Fino were familiar with the exertional requirements of claimant's job duties as a surveyor, the administrative law judge acted within his discretion in deferring to their opinions. *See Walker v. Director, OWCP*, 927 F.2d 181, 183, 15 BLR 2-16, 2-22 (4th Cir. 1991). As substantial evidence supports the administrative law judge's finding, we affirm his finding pursuant to Section 718.204(c)(4).

[6] The miner indicated that he was required to crawl for six to seven hours per day in low seam coal while carrying fifteen pounds of surveying equipment. Director's Exhibits 8, 34; Employer's Exhibit 17.

Pursuant to Section 718.204(b), claimant contends that the disability causation opinions of Drs. Hippensteel and Fino lack probative value under *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994), because the physicians failed to diagnose pneumoconiosis. Claimant's Brief at 9. Claimant overlooks the fact that the administrative law judge did not find pneumoconiosis established and thus, there could be no conflict between his finding at Section 718.202(a) and the disability causation opinions of Drs. Hippensteel and Fino. Moreover, even had the administrative law judge found pneumoconiosis established,[7] Drs. Hippensteel and Fino recognized that the miner had a mild impairment but concluded that smoking and heart disase, not pneumoconiosis, caused it, and determined that the miner's cardiac disability was not causally related to his coal mine employment.[8] Director's Exhibit 34 at 3, 13; Employer's Exhibit 17 at 11. Such opinions have probative value even where the administrative law judge finds pneumoconiosis established. *See Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 1193-95, 19 BLR 2-304, 2-315-19 (4th Cir. 1995). Therefore, we reject claimant's contention that these opinions merited no weight, and we affirm the administrative law judge's finding pursuant to Section 718.204(b).

In summary, substantial evidence supports the administrative law judge's conclusion that no element of entitlement was established. Therefore, we affirm the administrative law judge's Decision and Order denying benefits.

[7] He assumed the existence of pneumoconiosis for purposes of addressing total disability and causation. Decision and Order at 14.

[8] Although he did not diagnose pneumoconiosis, Dr. Hippensteel assumed that pneumoconiosis was established in rendering his opinion. Director's Exhibit 34 at 3.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge