BRB No. 98-1515 BLA

JIMMY CHILDERS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:
TIMCOALAND, INCORPORATED	)	
	)	
and	)	
	)	
AMERICAN RESOURCES INSURANCE COMPANY, INCORPORATED	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	

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

Michael E. Bevers (Nakamura & Quinn LLP), Birmingham, Alabama, for claimant.

John M. Bergquist (Parsons, Lee & Juliano, P.C.), Birmingham, Alabama, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (97-BLA-1134) of Administrative Law Judge Gerald M. Tierney awarding 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 claimant with twelve years and two months of coal mine employment, found employer to be the responsible operator, and noted that claimant has one dependent for purposes of benefits augmentation. The administrative law judge found that claimant suffers from pneumoconiosis arising out of coal mine employment and has a totally disabling respiratory or pulmonary condition pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b), and 718.204(c). Additionally, the administrative law judge concluded that pneumoconiosis is a substantial contributing cause of claimant's total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, he awarded benefits.

On appeal, employer contends that the administrative law judge erred by relying on the report of claimant's treating physician to find the existence of pneumoconiosis established. Employer also argues that the administrative law judge erred by relying on certain objective test results and medical opinions to find that claimant is totally disabled, and alleges that the administrative law judge failed to apply the correct disability causation standard. Claimant responds, urging affirmance, and the Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.[1]

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 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,

[1] We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment, dependency, responsible operator status, the benefits commencement date, and pursuant to 20 C.F.R. §§718.202(a)(1)-(3), 718.203(b), 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).

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); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (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 awarding benefits.

Employer challenges the administrative law judge's finding that claimant established that he suffers from pneumoconiosis pursuant to Section 718.202(a)(4). The administrative law judge found that, although the weight of the x-ray evidence did not establish the existence of clinical pneumoconiosis pursuant to Section 718.202(a)(1), the medical opinion of a Board-certified internist and pulmonologist who has treated claimant for pulmonary problems established that claimant suffers from a respiratory impairment arising out of coal mine employment. Decision and Order at 5-6. Specifically, Dr. Michael Connolly diagnosed silicosis and opined that claimant's other respiratory diseases, including bullous emphysema and the effects of tobacco use, have been aggravated "by dust from his coal mine employment" in a way which "exacerbates an already serious respiratory condition and further damages and weakens [his] lungs." Claimant's Exhibit 1. The administrative law judge found Dr. Connolly's opinion regarding the etiology of claimant's respiratory impairment to be "well-reasoned and documented," and accorded it great weight in view of Dr. Connolly's credentials and his examination, testing, and treatment of claimant.[2] Decision and Order at 5.

At the outset, employer's contention that Dr. Connolly's opinion is legally insufficient to establish the existence of pneumoconiosis lacks merit. Employer's Brief at 5-6. Dr. Connolly stated clearly that dust exposure in coal mine employment

[2] Apparently because he found that clinical pneumoconiosis was not established by x-ray, the administrative law judge at Section 718.202(a)(4) focused primarily on the physicians' discussion of the etiology of claimant's respiratory impairments, rather than simply accepting specific diagnoses such as "silicosis" and "pneumoconiosis."

"exacerbates" and "aggravates" claimant's respiratory condition and "further damages and weakens" his lungs. Claimant's Exhibit 1; *see* 20 C.F.R. §718.201. This is sufficient to support the administrative law judge's finding that Dr. Connolly diagnosed pneumoconiosis pursuant to Section 718.202(a)(4).

We likewise find no merit in employer's contention that Dr. Connolly's opinion is undocumented and unreasoned. Employer's Brief at 6. "A 'documented' report sets forth the clinical findings, observations, facts, etc., on which the doctor has based his diagnosis," *Fields v. Island Creek Coal Co*., 10 BLR 1-19, 1-22 (1987), and a reasoned medical opinion rests on documentation adequate to support the physician's conclusions. *Migliorini v. Director, OWCP*, 898 F.2d 1292, 1295, 13 BLR 2-418, 2-423 (7th Cir. 1990); *Fields*, 10 BLR at 1-22. Contrary to employer's contention, Dr. Connolly set forth the factors upon which he based his diagnosis, indicating that claimant's qualifying[3] pulmonary function study, when considered in light of his years of coal mine employment with extensive exposure to coal mine dust, supported the diagnosis of pneumoconiosis. Claimant's Exhibit 1; *see Migliorini, supra*; *Fields, supra*. Additionally, the administrative law judge acted within his broad discretion in finding Dr. Connolly's opinion well-reasoned. *See Trumbo v. Reading Anthracite Co*., 17 BLR 1-85, 1-88-89 and n.4 (1993).

Employer next contends that the administrative law judge erred in deferring to Dr. Connolly's diagnosis based upon his status as claimant's treating physician. Employer's Brief at 6. In this regard, employer alleges that because Dr. Connolly did not examine claimant in connection with this litigation but instead reviewed medical records in rendering his opinion, Dr. Connolly "was not serving in the capacity of a treating physician and his testimony is not due to be given more weight as a treating physician." Employer's Brief at 7.

The unequivocal diagnosis of a treating physician who is familiar with the claimant's medical history may be entitled to additional weight. *See McClendon v. Drummond Coal Co*., 861 F.2d 1512, 1513, 12 BLR 2-108, 2-109 (11th Cir. 1988). The record documents that Dr. Connolly has examined and treated claimant for pulmonary problems several times since 1995. Director's Exhibits 12, 13; Hearing Transcript at 20. Dr. Connolly indicated that he based his opinion on a review of

[3] A "qualifying" objective study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

medical records provided to him by claimant's counsel "and on my records of treatment of Jimmy D. Childers." Claimant's Exhibit 1 at 1. Therefore, the administrative law judge reasonably concluded that Dr. Connolly was more familiar with claimant's condition and medical history than Dr. Burki, a Board-certified internist and pulmonologist who never examined claimant. Decision and Order at 5; *see McClendon, supra*. Additionally, employer does not challenge the administrative law judge's finding that Dr. Connolly's opinion regarding the etiology of claimant's respiratory condition was unequivocal compared to Dr. Goldstein's vague statement attributing part of claimant's respiratory impairment to "Tb vs CWP vs Ca." Director's Exhibit 14 at 4; *see McClendon, supra*; *Justice v. Island Creek Coal Co*., 11 BLR 1-91, 1-94 (1988). Under these circumstances, the administrative law judge reasonably deferred to Dr. Connolly's diagnosis of pneumoconiosis, and we therefore reject employer's contention and affirm the administrative law judge's finding pursuant to Section 718.202(a)(4).

Employer next alleges that the administrative law judge erred by relying on pulmonary function studies and medical opinions to find that claimant has a totally disabling respiratory impairment when, employer asserts, the qualifying results of those studies and examinations were due to smoking, tuberculosis, and possible sarcoidosis. Employer's Brief at 7-8.

The issue under Section 718.204(c) is the existence and extent of respiratory disability, not its causation. *Compare* 20 C.F.R. §§718.204(c) with 20 C.F.R. §718.204(b). Substantial evidence supports the administrative law judge's finding that a totally disabling respiratory impairment exists. Both of claimant's pulmonary function studies are qualifying,[4] Director's Exhibits 8, 13, and all physicians who addressed the issue either stated that claimant is totally disabled or identified a moderate obstructive impairment that limits his activity. Director's Exhibits 12-14, 41. Based on this evidence, the administrative law judge rationally inferred total respiratory disability in view of the lifting requirements of claimant's job, Director's Exhibit 5; Hearing Transcript at 15-16; *see Budash v. Bethlehem Mines Corp.,* 9 BLR 1-48, *aff'd on recon.*, 9 BLR 1-104 (1986)(*en banc*), and permissibly found that the weight of the contrary and probative evidence established total respiratory disability pursuant to Section 718.204(c). *See Jordan v. Benefits Review Board*, 876 F.2d 1455, 1461, 12 BLR 2-371, 2-375(11th Cir. 1989); *Beatty v. Danri Corporation and Triangle Enterprises*, 16 BLR 1-11 (1991), *aff'd* 49 F.3d 993, 19 BLR 2-136 (3d

[4] Although claimant's May 1, 1995 pulmonary function study lacks tracings, his August 1, 1996 pulmonary function study has tracings and was reviewed and validated by Dr. Younes, who is Board-certified in Internal Medicine and Pulmonary Disease. Director's Exhibits 8, 9,

Cir. 1995); *Shedlock v. Bethlehem Mines Corp*., 9 BLR 1-195 (1986). Therefore, we reject employer's allegation of error and affirm the administrative law judge's finding pursuant to Section 718.204(c).

Lastly, employer contends that the administrative law judge failed to determine whether pneumoconiosis is a substantial contributing cause of claimant's total disability. Employer's Brief at 8. This contention lacks merit, as the administrative law judge cited *Lollar v. Alabama By-Products Corp.*, 893 F.2d 1258, 13 BLR 2-277 (11th Cir. 1990) and noted that "it is [c]laimant's burden to establish that pneumoconiosis is a substantial contributing factor in the causation of his total pulmonary disability." Decision and Order at 6. The administrative law judge applied this test to Dr. Connolly's statement that pneumoconiosis "causes or contributes to [claimant's] total respiratory disability," Claimant's Exhibit 1 at 2, and rationally inferred that Dr. Connolly regards pneumoconiosis as a substantial contributing cause.[5] *See Black Diamond Coal Mining Co. v. Director, OWCP [Marcum]*, 95 F.3d 1079, 20 BLR 2-325 (11th Cir. 1996); *Lollar, supra*. Substantial evidence supports the administrative law judge's finding pursuant to Section 718.204(b), which we therefore affirm.

In summary, substantial evidence supports the administrative law judge's conclusion that claimant established all elements of entitlement. Therefore, we affirm the administrative law judge's Decision and Order awarding benefits.

[5] In rendering this opinion, Dr. Connolly acknowledged claimant's other respiratory problems. Claimant's Exhibit 1 at 2.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge