BRB No. 03-0604 BLA

RAY BOLLING	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BETTY B COAL COMPANY, INCORPORATED	)	DATE ISSUED: 06/16/2004
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and W. Andrew Delph, Jr. (Wolfe Williams & Rutherford), Norton, Virginia, for claimant.

Michael F. Blair (Penn, Stuart & Eskridge), Bristol, Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (02-BLA-0201) of Administrative Law

Judge Richard T. Stansell-Gamm denying benefits on a duplicate claim[1] 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] The administrative law judge credited claimant with at least eleven years of coal mine employment based on the parties' stipulation and adjudicated this duplicate claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the newly submitted evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). Consequently, the administrative law judge found the evidence sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000).[3] On the merits, however, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Claimant also contends that the evidence is sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). Employer responds, urging

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[1]Claimant filed his first claim on September 27, 1982. Director's Exhibit 35. On February 24, 1988, Administrative Law Judge John J. Forbes, Jr. issued a Decision and Order denying benefits, which the Board affirmed, *Bolling v. Betty B Coal Co.*, BRB No. 88-1099 BLA (May 31, 1990)(unpub.). Judge Forbes' denial was based on claimant's failure to establish the existence of pneumoconiosis and total disability. Director's Exhibit 35. Because claimant did not pursue this claim any further, the denial became final. Claimant filed his second claim on December 7, 1994. Director's Exhibit 36. The Department of Labor denied this claim on May 31, 1995 because claimant failed to establish total disability and failed to establish a material change in conditions. *Id*. The denial became final because claimant did not pursue this claim any further. Claimant filed his third claim on March 19, 1997. Director's Exhibit 37. On July 11, 1997, the Department of Labor denied this claim because claimant failed to establish the existence of pneumoconiosis and total disability, and thus, claimant failed to establish a material change in conditions. *Id*. Since claimant did not pursue this claim any further, the denial became final. Claimant filed his most recent claim on March 23, 2000. Director's Exhibit 1.

[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 revisions to the regulation at 20 C.F.R. §725.309 apply only to claims filed after January 19, 2001. *See* 20 C.F.R. §725.2.

affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation, has declined to participate in this appeal.[4]

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

Claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Drs. Berry, Capalad, Forehand and Rasmussen opined that claimant suffers from pneumoconiosis, Director's Exhibits 12, 18, 35, 36, while Drs. Byers, Castle, Dahhan, Fino and Wicker opined that claimant does not suffer from the disease, Director's Exhibits 22, 35, 37; Employer's Exhibits 5, 6. The administrative law judge stated, "I find [that] the conclusions of Dr. Dahhan and Dr. Castle that [claimant] does not have coal workers' pneumoconiosis are the best documented and reasoned medical opinions in the record." Decision and Order at 24. The administrative law judge also stated that "[the opinions of Drs. Dahhan and Castle] are [the] most consistent with all the medical evidence in the record." *Id*. Based on his determination that the opinions of Drs. Castle and Dahhan outweigh the contrary opinions of Drs. Berry, Capalad, Forehand and Rasmussen, the administrative law judge found the medical opinion evidence insufficient to establish the existence of pneumoconiosis.[5]

Claimant specifically asserts that the administrative law judge erred in failing to accord dispositive weight to the diagnoses of legal pneumoconiosis rendered by Drs. Forehand and Rasmussen. Claimant's assertion is based on the premise that because chronic obstructive pulmonary disease is encompassed within the definition of pneumoconiosis, a diagnosis of legal pneumoconiosis cannot be ruled out by the variability of the condition that is related to coal dust exposure. Dr. Rasmussen diagnosed coal workers' pneumoconiosis, chronic obstructive pulmonary disease and emphysema and indicated that each of these conditions is related to coal dust exposure. Director's Exhibit 12. Dr. Forehand diagnosed

[4]Since the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §§718.204(b)(2)(i), 725.309 (2000) and 718.202(a)(1)-(3) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[5]Although Drs. Byers, Fino and Wicker opined that claimant does not suffer from pneumoconiosis, the administrative law judge discredited their opinions as he found that they are not reasoned and documented. Decision and Order at 22, 23.

coal workers' pneumoconiosis related to coal dust exposure. Director's Exhibit 36. Contrary to claimant's assertion, the administrative law judge did not indicate that a diagnosis of legal pneumoconiosis can be ruled out by the variability of the condition that is related to coal dust exposure. Rather, the administrative law judge properly accorded greater weight to the opinions of Drs. Castle and Dahhan than to the contrary opinions of Drs. Berry, Capalad, Forehand and Rasmussen because the opinions of the former physicians are better documented and reasoned. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). In considering the conflicting medical opinions, the administrative law judge stated, "[a]s the sole physician in this record to both examine [claimant] and conduct a review of his medical record, Dr. Dahhan…presented the best documented opinion in the record." Decision and Order at 24. The administrative law judge also stated that "based on that extensive documentation, [Dr. Dahhan] presented a reasoned conclusion that [claimant] did not have pneumoconiosis." *Id*. Further, the administrative law judge stated that "[i]n terms of comprehensiveness, [Dr. Castle's] review identified three, rather than two, potential sources of [claimant's] obstructive defect: cigarette smoke, coal dust, and asthma." *Id*. The administrative law judge noted that "[a]fter eliminating cigarette smoke as a cause because [claimant] was a non-smoker, Dr. Castle provided a detail (sic) explanation for his discriminating between a coal dust related obstruction and asthma." *Id*. After noting the preponderance of negative x-ray readings and claimant's medical history, the administrative law judge concluded that "[t]hat medical history coupled with valid pulmonary function tests showing very significantly reversible airway obstruction without restriction, led Dr. Castle to identify asthma, and not coal workers' pneumoconiosis, as the etiology of [claimant's] respiratory impairment." *Id*. In contrast, the administrative law judge stated, "[d]ue to the dated nature of his examination, [Dr. Berry's] opinion obviously is not as well documented as more recent evaluations." *Id*. at 22. The administrative law judge also stated that "Dr. Berry set out his conclusion in a terse nature on the examination report without providing any reasoning for his diagnoses." *Id*.

With regard to the opinion of Dr. Capalad, the administrative law judge stated that "Dr. Capalad based his diagnosis on 'history' and on [claimant's] length of coal mine employment without identifying any objective medical support." Decision and Order at 22. The administrative law judge also stated that "[t]he absence of specific documentation became more apparent in 1987 when Dr. Capalad also equivocally expressed his conclusion using the terms 'suspected' and 'possibly' to qualify the word, 'pneumoconiosis.' " *Id*.

In considering Dr. Forehand's opinion, the administrative law judge stated:

> The 1995 finding of coal workers' pneumoconiosis by Dr. Forehand is more modern but still not as well documented as the opinions of physicians who reviewed the entire record. His reasoning is also somewhat tarnished

> because he relied principally on the January 1995 pulmonary function test showing a substantial, and disabling, pulmonary impairment. When a repeat May 1995 series of pulmonary tests produced much better results, Dr. Forehand merely changed his assessment about the extent of [claimant's] disability without extensively discussing how the later test, which clearly established variability in the nature of [claimant's] pulmonary obstruction defect, still supported his diagnosis of pneumoconiosis, which is considered a disease that causes permanent damage and is not susceptible to improvement.

Decision and Order at 22-23.

Further, the administrative law judge stated that "[w]hile Dr. Rasmussen did prove (sic) significant reasoning for his opinion, his assessment has lesser, relative probative weight than Dr. Dahhan's and Dr. Castle's evaluation in terms of documentation and reasoning." Decision and Order at 23. In particular, the administrative law judge noted that Dr. Rasmussen did not conduct a review of claimant's medical history, but relied on the medical history provided by claimant, which denied that he experienced bronchial asthma. *Id*. The administrative law judge concluded that "[i]n light of the notations from Dr. Berry and Dr. Byers documenting asthma, and [claimant's] prescription medication for inhalers, Dr. Rasmussen clearly relied on an incorrect medical history." *Id*. The administrative law judge further stated, "[e]ven in the absence of consideration of asthma, Dr. Rasmussen's opinion also contains less than complete reasoning because he failed to address the variability in the pulmonary function tests." *Id*.

In addition, the administrative law judge properly accorded greater weight to the opinions of Drs. Castle and Dahhan than to the contrary opinion of Dr. Rasmussen based on their superior qualifications.[6] *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Since it was reasonable for the administrative law judge to accord dispositive weight to the opinions of Drs. Castle and Dahhan because they are better reasoned and documented, *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-21-22; *Lucostic*, 8 BLR at 1-47; *Fuller*, 6 BLR at 1-1294, and because of their superior qualifications, *Martinez*, 10 BLR at 1-26; *Dillon*, 11 BLR at 1-114; *Wetzel*, 8 BLR at 1-141, we reject claimant's assertion that the administrative law judge erred in failing to accord dispositive weight to the opinions of Drs. Forehand and Rasmussen. Since it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of

[6]Dr. Rasmussen is Board-certified in internal medicine, Director's Exhibits 12, 18, while Drs. Castle and Dahhan are Board-certified in internal medicine and pulmonary medicine, Director's Exhibit 22; Employer's Exhibit 6.

pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, we hold that the administrative law judge properly denied benefits under 20 C.F.R. Part 718.[7] *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

[7]In view of our disposition of this case at 20 C.F.R. §718.202(a), we decline to address claimant's contentions at 20 C.F.R. §718.204(c). *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge