BRB No. 03-0833 BLA

ROY HENSON Claimant-Petitioner v. SHAMROCK COAL COMPANY, INCORPORATED and JAMES RIVER COAL COMPANY Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/14/2004 DECISION and ORDER

Appeal of the Decision and Order-Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Lois A. Kitts (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denial of Benefits (02-BLA-5203) of Administrative Law Judge Robert L. Hillyard 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). Following a hearing, the administrative law judge issued a decision finding that the evidence of record supports the parties' stipulation to twenty-three years of coal mine employment. The administrative law judge further found that the evidence is insufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R §§718.204(a) and 718.204. Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's findings under Sections 718.202(a)(1), (a)(4), 718.204(b)(2)(iv) and 718.204(c). In response, employer argues that the administrative law judge's denial of benefits is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond in this appeal.[1]

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).

Regarding the issue of total disability pursuant to Section 718.204(b)(iv), claimant argues that Dr. Baker's single opinion, that claimant was "100% occupationally disabled," is well reasoned and documented, and is sufficient for "invoking the presumption of total disability." Claimant's Brief at 8. Claimant asserts that in addition to claimant's work history, Dr. Baker based his opinion on claimant's medical history, x-rays, physical examination, pulmonary function and blood gas studies. *Id.* Claimant argues that the administrative law judge made no mention of claimant's usual coal mine work in conjunction with Drs. Baker and Hussain's opinions of total disability. Claimant's Brief at 10. Citing *Bentley v. Director, OWCP*, 7 BLR 1-612 (1984), claimant notes that the administrative law judge did not mention claimant's age or work experience in conjunction with his assessment that claimant was not totally disabled.

In considering Section 718.204(b)(2)(iv), the administrative law judge acknowledged Dr. Baker's status as claimant's treating physician, and that his opinion recorded claimant's occupational and smoking histories and the results of claimant's physical examination, x-ray, pulmonary function and blood gas studies. Decision and Order-Denial of Benefits at 6, 7, 12. The administrative law judge, however, rationally

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[1]We affirm, as unchallenged, the administrative law judge's finding that claimant established twenty-three years of coal mine employment and his findings pursuant to 20 C.F.R. §§718.202(a)(2)-(3) and 718.204(b)(2)(i)-(iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

found Dr. Baker's statement that claimant "should limit further exposure" to coal dust and that "such a limitation would 'imply'" total disability, is not equivalent to a finding of total disability.[2] *Taylor v. Evans & Gambrel Co.,* 12 BLR 1-83 (1988); Decision and Order-Denial of Benefits at 15; Director's Exhibit 10. Further, the administrative law judge reasonably found Dr. Baker's opinion insufficient to establish total disability because he did not offer an opinion as to whether claimant could perform comparable work in a dust-free environment, and failed to offer a "rationale for his diagnosis of implied disability in light of non-qualifying arterial blood gas studies and normal pulmonary function studies." *Clark v. Karst-Robbins Coal Co.,* 12 BLR 1-149 (1989) (*en banc*); Decision and Order-Denial of Benefits at 15. Contrary to claimant's assertion, the administrative law judge was under no obligation to accord "special weight" to the opinion of claimant's treating physician, Dr. Baker. 20 C.F.R. §718.104(d)(5); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993).[3]

Similarly, the administrative law judge reasonably found Dr. Hussain's opinion insufficient to establish total disability because he failed to give any reasoning or documentation to support his opinion that claimant has a moderate impairment. *Clark*, 12 BLR 1-149; Decision and Order-Denial of Benefits at 12, 15; Director's Exhibit 9; Employer's Exhibit 4. The administrative law judge specifically found that Dr. Hussain did not explain the "normal readings" in the pulmonary function and blood gas studies. Decision and Order-Denial of Benefits at 12; Director's Exhibit 9; Employer's Exhibit 4. Within a proper exercise of his discretion, the administrative law judge found the opinions of Drs. Rosenberg and Fino, that claimant does not have any respiratory impairment, well reasoned, documented and supported by the normal results of the

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[2] Dr. Baker opined:

> Patient has a second impairment based on Section 5.8, Page 106, Chapter Five, Guides to the Evaluation of Permanent Impairment, Fifth Edition, which states that persons who develop pneumoconiosis should limit further exposure to the offending agent. This would imply the patient is 100% occupationally disabled for work in the coal mining industry or similar dusty occupations.

Director's Exhibit 12.

[3] The administrative law judge properly found that 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*); Decision and Order-Denial of Benefits at 4.

objective evidence of record. *Clark*, 12 BLR 1-149; Decision and Order at 15, 16; Employer's Exhibits 1, 2. Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish that claimant is totally disabled pursuant to Section 718.204(b)(2)(iv).

We reject claimant's assertion that the administrative law judge erred by not comparing the exertional requirements of claimant's coal mine employment with the physicians' assessments of claimant's physical limitations. This analysis is required in situations where a physician details a claimant's physical limitations, but does not provide an opinion regarding the extent of any disability from which the claimant suffers. *See Gee v. W.G. Moore and Sons,* 9 BLR 1-4 (1986)(*en banc); see also Onderko v. Director, OWCP,* 14 BLR 1-2 (1989); *Mazgaj v. Valley Camp Coal Co.,* 9 BLR 1-201 (1986). Herein, the administrative law judge rationally found that the medical opinions of record either opined that claimant has the respiratory capacity to perform the work of a coal miner or that the opinion was not reasoned and documented to establish total disability.[4] Moreover, claimant's assertion of vocational disability based on his age and limited education and work experience does not support a finding of total respiratory or pulmonary disability compensable under the Act.[5] *See* 20 C.F.R. §718.204; *Carson v. Westmoreland Coal* Co., 19 BLR 1-18 (1994).

Because the administrative law judge properly found that the medical evidence of record is insufficient to establish the existence of total disability at Section 718.204(b)(2), we do not reach claimant's arguments under Section 718.202(a). The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge when they are supported by substantial evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

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[4] Additionally, claimant argues that because pneumoconiosis is a progressive and irreversible disease, it can "be concluded that during the considerable amount of time that has passed since the initial diagnosis of pneumoconiosis the claimant's condition has worsened, thus adversely affecting his ability to perform his usual coal mine work or comparable gainful work." Claimant's Brief at 9. Contrary to claimant's contention, there is no evidence in the record to support this allegation.

[5] Claimant's reliance on *Bentley v. Director, OWCP*, 7 BLR 1-612 (1982), is misplaced. In *Bentley,* the Board held that age, work experience and education are only relevant to claimant's ability to perform comparable and gainful work, an issue which did not need to be reached in that case in light of the administrative law judge's finding, at 20 C.F.R. §410.426(a), that claimant did not establish that he had any impairment which disabled him from his usual coal mine employment. *See also* 20 C.F.R. §718.204(b)(1), (b)(2).

Accordingly, the administrative law judge's Decision and Order-Denial of Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge