

BRB No. 07-0806 BLA

J.J.)
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 Claimant-Respondent)
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 v.)
)
 U.S. STEEL CORPORATION) DATE ISSUED: 06/27/2008
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 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Peter K. Nakamura (Nakamura Quinn & Walls), Birmingham, Alabama, for claimant.

James N. Nolan (Wallston, Wells & Birchall, LLP), Birmingham, Alabama, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2006-BLA-05569) of Administrative Law Judge Adele Higgins Odegard 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).¹ The administrative law judge credited claimant with thirty years of coal mine employment based on the parties' stipulation and found that the evidence was sufficient to establish the existence of pneumoconiosis arising from coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b).

¹ Claimant filed his claim for benefits on April 25, 2005. Director's Exhibit 1.

The administrative law judge also determined that the evidence was sufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in her consideration of the medical opinion evidence relevant to the issues of the existence of pneumoconiosis and disability causation pursuant to Sections 718.202(a)(4) and 718.204(c). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief.² Employer has also filed a reply brief.

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.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 363 (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 a finding of 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).

In this case, the administrative law judge determined that claimant established the existence of clinical pneumoconiosis, based on the x-ray evidence, pursuant to Section 718.202(a)(1) and the existence of clinical pneumoconiosis, based on the opinion of Dr. Hawkins, pursuant to Section 718.202(a)(4). On appeal, employer only challenges the administrative law judge's finding at Section 718.202(a)(4). In view of the alternative methods of establishing the existence of pneumoconiosis pursuant to Section

² We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established the existence of pneumoconiosis based on the x-ray evidence at 20 C.F.R. §718.202(a)(1); that his pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203; and that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

³ This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit as claimant's coal mine employment was in Alabama. *See Slatick v. Director, OWCP*, 698 F.2d 433, 5 BLR 2-49 (11th Cir. 1983); *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*); Director's Exhibit 6.

718.202(a)(1)-(4), once the administrative law judge found that claimant established the existence of clinical pneumoconiosis under Section 718.202(a)(1), she was not required to further consider whether claimant had also established the existence of clinical or legal pneumoconiosis at Section 718.202(a)(4), nor was she required to consider whether all of the evidence, weighed together, was sufficient to establish the existence of pneumoconiosis at Section 718.202(a). See *United States Steel Mining Co. v. Director, OWCP [Jones]*, 386 F.3d 977, 991, 23 BLR 2-213, 2-237 (11th Cir. 2004); *Dixon v. North Camp Coal Co.*, 8 BLR 1-1-344 (1985). Because we have affirmed, as unchallenged by employer on appeal, the administrative law judge's finding that claimant established the existence of clinical pneumoconiosis by x-ray evidence pursuant to Section 718.202(a)(1), it is not necessary that we address employer's argument that the administrative law judge erred in rejecting the opinions of Drs. Goldstein and Rosenberg, that claimant does not have clinical pneumoconiosis, pursuant to Section 718.202(a)(4).

Employer also asserts that the administrative law judge erred in weighing the conflicting medical opinion evidence as to whether claimant's totally disabling respiratory impairment was caused by pneumoconiosis pursuant to Section 718.204(c). We disagree.

Section 718.204(c)(1) provides that:

A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

- (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
- (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1)(i), (ii).

In considering the medical opinions on the issue of disability causation, the administrative law judge properly noted that Dr. Goldstein attributed claimant's respiratory impairment to "chronic obstructive pulmonary disease secondary to smoking, exogenous obesity and cardiomegaly with probably some element of heart failure" and that Dr. Rosenberg opined that claimant's restrictive respiratory impairment was caused by complications arising from his dialysis treatment and excessive weight. Decision and Order at 16, citing Employer's Exhibit 1; Employer's Exhibits 5, 6. However, because neither of these physicians was of the opinion that claimant had clinical pneumoconiosis,

contrary to the administrative law judge's finding, the administrative law judge reasonably found that they "could not have found that [clinical] pneumoconiosis was a contributing cause of his impairment" and, thus, she permissibly accorded their opinions little weight on this issue. *See Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); Decision and Order at 16.

Unlike Drs. Goldstein and Rosenberg, Dr. Hawkins opined that claimant suffered from clinical pneumoconiosis and he attributed fifty percent of claimant's totally disabling respiratory impairment to clinical pneumoconiosis caused by coal dust exposure.⁴ The administrative law judge permissibly credited Dr. Hawkins's opinion, that claimant is totally disabled due, in part, to pneumoconiosis, as she found that Dr. Hawkins's opinion was reasoned and documented. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that claimant satisfied his burden of establishing total disability due to pneumoconiosis pursuant to Section 718.204(c). *See Black Diamond Coal Mining Co. v. Director, OWCP [Marcum]*, 95 F.3d 1079, 20 BLR 2-325 (11th Cir. 1996); *Lollar v. Alabama By-Products Corp.*, 893 F.2d 1258, 13 BLR 2-277 (11th Cir. 1990).

It is within the purview of the administrative law judge to weigh the evidence, draw inferences and determine credibility. *See Jones*, 386 F.3d at 992, 23 BLR at 2-238; *Jordan v. Benefits Review Board*, 876 F.2d 1455, 1460, 12 BLR 2-371, 2-375 (11th Cir. 1989). Because the administrative law judge fully explained why she accorded greater weight to the opinion of Dr. Hawkins at Section 718.204(c), we affirm the administrative law judge's finding that claimant is totally disabled due to pneumoconiosis, and that he is entitled to benefits. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

⁴ Dr. Hawkins conducted the Department of Labor (DOL) examination on July 22, 2005 and later became claimant's treating physician. Director's Exhibit 10; Claimant's Exhibit 1. Dr. Hawkins diagnosed pneumoconiosis based on a positive x-ray, physical findings and the results of claimant's pulmonary function testing, which showed mild airflow obstruction and a moderate ventilatory defect. Director's Exhibit 10. Dr. Hawkins also diagnosed coronary artery disease and chronic obstructive pulmonary disease/chronic bronchitis due to smoking, but also exacerbated by coal dust exposure. *Id.* Dr. Hawkins opined that claimant was totally disabled from performing his usual coal mine employment by a moderate to severe respiratory impairment. *Id.* When asked on the DOL form the extent to which each condition contributed to claimant's impairment, Dr. Hawkins indicated that clinical pneumoconiosis contributed fifty percent to the impairment, while chronic obstructive pulmonary disease/chronic bronchitis contributed forty percent and heart disease contributed ten percent. *Id.*

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge