BRB No. 03-0369 BLA

MONROE C. COMBS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOUNTAIN COALS CORPORATION	)	
	)	
and	)	
	)	
ZURICH AMERICAN INSURANCE GROUP	)	DATE ISSUED: 03/05/2004
	)	
	)	
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 – Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order – Denying Benefits (02-BLA-5273) of Administrative Law Judge Joseph E. Kane in a miner's 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).[2] The administrative law judge credited the miner with nineteen years of coal mine employment, noting that employer withdrew its challenge to this issue, 2002 Hearing Transcript at 10-11. Decision and Order at 4. Applying the regulations pursuant to 20 C.F.R. Part 718, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability pursuant to 20 C.F.R. §718.204(b). Decision and Order at 10-17. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in failing to find the existence of pneumoconiosis established pursuant to Section 718.202(a)(1) and Section 718.202(a)(4). Claimant's Brief at 3-7. Additionally, claimant contends that the administrative law judge erred in failing to find that claimant has established total respiratory disability based on the medical opinion evidence. Claimant's Brief at 7-9. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, 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 rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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[1]Claimant is Monroe C. Combs, the miner, who filed his claim for benefits on February 12, 2001. Director's Exhibit 2.

[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]We affirm the administrative law judge's findings that pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(2)-(a)(3) and that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(i)-(b)(2)(iii) inasmuch as these findings are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv),[4] Dr. Baker reported that claimant is "100% occupationally disabled for work in the coal mining industry or similar dusty occupations" and has "mild resting arterial hypoxemia." Director's Exhibit 12. Dr. Hussain found a mild impairment and that claimant has the respiratory capacity to perform work as a coal miner. Director's Exhibit 10. Dr. Dahhan opined that claimant has no pulmonary impairment and that claimant retains the respiratory capacity to perform his usual coal mine employment. Director's Exhibit 14.

In considering the medical opinion evidence, the administrative law judge stated that "[t]he sole basis for Dr. Baker's diagnosis that Claimant is totally disabled is the presence of pneumoconiosis." Decision and Order at 16. The administrative law judge noted that Dr. Baker testified that "his diagnosis was based on the 'total picture of the patient' . . . [but this physician] cite[d] only symptoms of pneumoconiosis when he refer[red] to 'total picture' . . . [and] admitted that the objective testing alone would not support a finding of total disability." *Id.* Therefore, the administrative law judge permissibly accorded Dr. Baker's opinion "little probative weight" because "it is not well reasoned." *Id; 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). Moreover, the administrative law judge properly gave less weight to Dr. Hussain's report inasmuch as he found that this physician "does not provide a rationale for his opinion concerning Claimant's level of impairment." Decision and Order at 17; *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-21-22; *Lucostic*, 8 BLR at 1-47. The administrative law judge, within a proper exercise of his discretion, found Dr. Dahhan's opinion to be "well reasoned and well documented [because] [h]is diagnosis is supported by his objective findings and examination observations, and his rationale is reasonable and explicit." Decision and Order at 17. Therefore, we affirm the administrative law judge's determination to "grant [Dr. Dahhan's] opinion probative weight." *Id.*; *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-21-22; *Lucostic*, 8 BLR at 1-47.

Claimant contends that the administrative law judge erred in failing to consider claimant's usual coal mine work in discussing the opinions of Drs. Baker and Hussain. Claimant's Brief at 8-9. Contrary to claimant's contention,[5] the administrative law judge

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[4]The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c) (2000), is now found at 20 C.F.R. §718.204(b) in the new regulations, while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b) (2000), is now found at 20 C.F.R. §718.204(c) in the new regulations.

[5]Citing *Bentley v. Director, OWCP*, 7 BLR 1-612 (1984), claimant asserts that the administrative law judge erred in failing to mention his age, education, or work

was not required to make such an inquiry regarding claimant's usual coal mine work[6] because he permissibly discredited the opinions of Drs. Baker and Hussain regarding total respiratory disability. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002). Inasmuch as Dr. Dahhan found that claimant has no pulmonary impairment, Director's Exhibit 14, it was unnecessary for him to demonstrate awareness of the physical requirements of claimant's usual coal mine employment before opining that claimant is not totally disabled from performing his usual coal mine work. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *see Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon.*, 9 BLR 1-104 (1986). Accordingly, we affirm the administrative law judge's finding that claimant failed to demonstrate total respiratory disability by the medical opinion evidence.[7] *See* 20 C.F.R. §718.204(b)(iv); *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

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experience in conjunction with the administrative law judge's assessment that the claimant was not totally disabled. Claimant's Brief at 9. Claimant's age, education, and work experience are relevant to establishing total respiratory disability at 20 C.F.R. Part 410. Because claimant filed his claim subsequent to March 31, 1980, however, the provisions of 20 C.F.R. Part 718, rather than 20 C.F.R. Part 410, are to be applied. 20 C.F.R. §718.2; *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986).

[6]The administrative law judge noted that claimant's last coal mine employment "required constant standing and heavy lifting, and . . . some bending, crawling, and stooping." Decision and Order at 4. The administrative law judge determined that "[c]laimant's coal mine employment required moderately heavy manual labor at times." Decision and Order at 17.

[7]Contrary to claimant's contention, the administrative law judge was not required to give greater weight to Dr. Baker's opinion based on his status as treating physician. *Peabody Coal Co. v. Odom*, 342 F.3d 486, BLR (6th Cir. 2003); *Eastover Mining Co. v. Williams*, 338 F.3d 501, BLR (6th Cir. 2003). Pursuant to 20 C.F.R. §718.104(d), the administrative law judge considered the factors relevant for determining the appropriate weight to be accorded a treating physician's opinion and permissibly found that no additional weight should be granted to Dr. Baker's opinion on this basis. Decision and Order at 12-13; *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002).

In considering all of the relevant evidence pursuant to Section 718.204(b), the administrative law judge properly found that claimant failed to establish total respiratory disability by a preponderance of the evidence. Decision and Order at 17; *see Ondecko*, 114 S.Ct. at 2259, 18 BLR at 2A-12; *Kuchwara*, 7 BLR at 1-170. Therefore, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(b). *See Fields*, 10 BLR at 1-21; *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*).

Inasmuch as we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability, *see* 20 C.F.R. §718.204(b), a requisite element of entitlement under Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*), we also affirm the administrative law judge's denial of benefits.[8]

[8]Because the administrative law judge has properly found that claimant failed to establish total respiratory disability, *see* discussion, *supra*, claimant's contentions regarding the existence of pneumoconiosis are moot, and we need not address those specific contentions. *See Bibb v. Clinchfield Coal Co.*, 7 BLR 1-134, 1-136 (1984); *Creggar v. U.S. Steel Corp.*, 6 BLR 1-1219, 1-1222 (1984).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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PETER A. GABAUER, JR.
Administrative Appeals Judge