BRB No. 03-0402 BLA

JAMES S. MULLIN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 03/08/2004
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Harry T. Coleman, Scranton, Pennsylvania, for claimant.

Michelle S. Gerdano (Howard Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (02-BLA-5017) of Administrative Law Judge Robert D. Kaplan 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] Claimant filed the instant claim, a

[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations

duplicate claim, on July 20, 2001.[2] After crediting claimant with six years of coal mine employment based upon the stipulation of the parties, the administrative law judge considered the claim pursuant to the applicable regulations at 20 C.F.R. Part 718. The administrative law judge noted that the parties stipulated that claimant suffers from pneumoconiosis, and that claimant's pneumoconiosis arose out of coal mine employment. The administrative law judge found that, because these elements of entitlement were previously adjudicated against claimant, claimant established a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). Considering the claim on the merits, the administrative law judge found the evidence of record insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, he denied benefits. On appeal, claimant challenges the administrative law judge's finding that he failed to establish total disability under Section 718.204(b)(2)(iv), arguing that the administrative law judge erred in discounting Dr. Bobeck's medical opinion. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's decision denying benefits.[3]

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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.

[2]Claimant filed an initial claim for benefits on June 27, 1973. Director's Exhibit 13. In a Decision and Order dated March 19, 1986, Administrative Law Judge Alfred Lindeman credited claimant with six years of coal mine employment, and found that, while the record contained a positive x-ray interpretation supporting a finding of pneumoconiosis, claimant failed to establish pneumoconiosis arising out of coal mine employment and total disability. *Id*. Accordingly, Judge Lindeman denied benefits. Claimant filed a second claim on July 6, 1995. Director's Exhibit 14. This claim was denied on August 25, 1995 by the district director, who found that claimant established none of the elements of entitlement under 20 C.F.R. Part 718. *Id*. Claimant thereafter took no further action in pursuit of benefits until filing this duplicate claim on July 20, 2001. Director's Exhibit 1.

[3]We affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment finding, and findings that claimant established pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(c), and a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3-4.

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).

Claimant's sole contention on appeal is that the administrative law judge erred in discounting Dr. Bobeck's medical opinion, the only opinion of record which, if credited, would support a finding of total disability under Section 718.204(b)(2)(iv). Specifically, claimant argues that it was improper for the administrative law judge to find Dr. Bobeck's opinion entitled to minimal weight because the doctor did not administer a pulmonary function study or arterial blood gas study, but based his opinion on claimant's history.

Claimant's contention lacks merit. A reasoned opinion is one in which the administrative law judge finds the underlying documentation adequate to support the physician's conclusions. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Whether an opinion is sufficiently documented and reasoned is for the administrative law judge as the fact-finder to decide. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*). The administrative law judge correctly stated that Dr. Bobeck, who examined claimant on April 29, 2002, testified in his deposition that he did not administer any diagnostic testing, but "strongly believe[d], based on [claimant's] history, that he is totally disabled."[4] Claimant's Exhibit 1 at 13-14. Contrary to claimant's contention, the administrative law judge properly discounted Dr. Bobeck's opinion on the ground that it is not well-supported by objective data. *Clark,* 12 BLR at 1-155; *Tackett*, at 12 BLR 1-14; Decision and Order at 6; Claimant's Exhibit 1. Furthermore, the administrative law judge properly found that the contrary opinions of Drs. Talati and Cander are well-reasoned and documented,[5] and entitled to greater weight for that reason, and

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[4]Dr. Bobeck also testified that he reviewed Dr. Talati's report, including the results of the pulmonary function study and arterial blood gas study Dr. Talati administered on September 18, 2001, which Dr. Talati indicated were "normal," Director's Exhibit 5. Claimant's Exhibit 1 at 20-23. Dr. Bobeck did not elaborate and explain, however, how or to what extent his opinion was based on a review of these studies. *Id*.

[5]The administrative law judge also found that Dr. Sahillioglu's opinion, that claimant does not suffer from a totally disabling respiratory impairment, is well-reasoned and documented, but that because Dr. Sahillioglu's latest report, dated August 17, 1995, is more than six years older than the more recent opinions of

because the qualifications of Drs. Talati and Cander are superior to those of Dr. Bobeck.[6] *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 6-7; Director's Exhibits 5, 20. We affirm, therefore, the administrative law judge's finding that the evidence of record is insufficient to establish total disability under Section 718.204(b)(2)(iv).

We also affirm, as unchallenged on appeal, the administrative law judge's determination that the evidence of record is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 5-6. Because claimant failed to establish total disability pursuant to Section 718.204(b)(2)(i)-(iv), a requisite element of entitlement under Part 718, the administrative law judge properly denied benefits. *See* 20 C.F.R. §718.204(b)(2)(i)-(iv); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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record, he would not rely upon Dr. Sahillioglu's opinion. Decision and Order at 7; Director's Exhibits 13, 14.

[6]The administrative law judge correctly found that Drs. Talati and Cander are Board-certified in internal medicine and pulmonary disease medicine, and that Dr. Bobeck is Board-eligible in internal medicine. Decision and Order at 6-7; Director's Exhibits 7, 20; Claimant's Exhibit 1 at 7.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge