BRB Nos. 05-0919 BLA

LENWOOD BIXLER, SENIOR	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED: 03/22/2006
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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: McGRANERY, HALL, and BOGGS, Administrative Appeals Judges.

Claimant appeals the Decision and Order – Denial of Benefits (05-BLA-5020) of Administrative Law Judge Ralph A. Romano on a 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). Initially, the administrative law judge credited claimant with less than ten years of qualifying coal mine employment and, adjudicating the claim pursuant to 20 C.F.R. Part 718, found that claimant failed 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). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in computing the

[1] Claimant, Lenwood Bixler, Sr., filed an application for benefits on September 11, 2003. Director's Exhibit 2.

length of his coal mine employment, in failing to find the existence of pneumoconiosis established by x-ray evidence under Section 718.202(a)(1), and in failing to credit the medical opinion of his treating physician, Dr. Kraynak, who opined that claimant is totally disabled due to pneumoconiosis. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.[2]

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 the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant argues that in rendering his finding that claimant was not totally disabled pursuant to Section 718.204(b)(2)(iv), the administrative law judge erred by rejecting the well reasoned and documented opinion of Dr. Kraynak because, unlike the opinions of Drs. Rashid and Corazza which are based on only single examinations of claimant and limited diagnostic tests, Dr. Kraynak relied on numerous physical examinations, claimant's medical, social, and occupational histories, and most, if not all, of the medical evidence contained in the record. Claimant additionally contends that Section 718.104(d) compels an administrative law judge to accord greater weight to the opinion of a miner's treating physician, and that the administrative law judge thus erred by failing to accord greater weight to the opinion of Dr. Kraynak based on his treating physician status.

Although it is "well-established in [the Third] circuit that treating physicians' opinions are assumed to be more valuable than those of non-treating physicians," *Soubik v. Director, OWCP*, 366 F.3d 226, 235, 23 BLR 2-82, 2-101 (3d Cir. 2004), the circuit court has also made plain that an "ALJ may permissibly require the treating physician to provide more than a conclusory statement… ." *Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20-21 (3d Cir. 1997). We reject claimant's argument that the administrative law judge erred in relying on the opinions of Drs. Rashid and Corazza rather than the opinion of Dr. Kraynak. The administrative law judge found that Dr. Kraynak's opinion, that claimant is totally and permanently disabled due to coal workers' pneumoconiosis, was entitled to less weight for several reasons: Dr. Kraynak is not board-certified in any medical specialty; he failed to explain the discrepancy between his conclusion that claimant was totally disabled and the non-qualifying pulmonary function studies and arterial blood gas studies; and he failed to

[2] We affirm the administrative law judge's determinations pursuant to 20 C.F.R. §§718.202(a)(2)-(3) and 718.204(b)(2)(i)-(iii) because these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 8, 10.

provide any diagnostic studies supportive of his conclusions. Consequently, the administrative law judge found that Dr. Kraynak's total disability assessment was undermined by the lack of documentation and diagnostic tests to support his conclusions. This was rational. 20 C.F.R. §718.104(d)(5); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *see Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 11; Director's Exhibits 13. Additionally, although the administrative law judge considered Dr. Kraynak's status as claimant's treating physician since January 2003, he determined, within a permissible exercise of his discretion, that Dr. Kraynak's treating physician status was "questionable" because claimant testified that Dr. Kraynak began treating him only after he filed his application for benefits and that he was still being seen by Dr. Little, his family physician. Decision and Order at 9; Hearing Transcript at 22, 28-29.

In assessing the probative value of the medical opinion evidence, the administrative law judge reasonably accorded greater weight to the opinions of Drs. Rashid and Corazza, who possess greater medical expertise than Dr. Kraynak, and opined that claimant did not suffer from a totally disabling respiratory impairment. The administrative law judge found their opinions to be well-reasoned, *i.e.*, they were documented by normal physical examination findings and normal pulmonary function studies and arterial blood gas studies. Decision and Order at 10-11; Director's Exhibits 14, 31. In contrast, the administrative law judge accorded "little weight" to the opinion of Dr. Kraynak because it was not supported by reasoning and objective studies and the administrative law judge found Dr. Kraynak's status as treating physician questionable. Decision and Order at 9. The administrative law judge has broad discretion to determine the weight to accord each physician's opinion. *Mangifest*, 826 F.2d at 1326, 10 BLR at 2-234, and "is not bound to accept the opinion or theory of any medical expert, but may weigh the medical evidence and draw its own inferences." *Mancia v. Director, OWCP*, 130 F.3d 579, 588, 21 BLR 2-215, 2-233-234 (3d Cir. 1997). Hence, contrary to claimant's argument, the administrative law judge reasonably declined to accord Dr. Kraynak's opinion dispositive weight. 20 C.F.R. §718.104(d)(1)-(5); *Lango*, 104 F.3d 573, 21 BLR 2-12; *see Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003) (noting that Section 718.104(d) does not call for automatic acceptance of a treating physician's opinion); *Consolidation Coal Co. v. Held*, 314 F.3d 184, 22 BLR 2-564 (4th Cir. 2002); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1997); *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994). Because claimant asserts that the administrative law judge erred in his consideration of Dr. Kraynak's opinion but points to nothing in the record to undermine the administrative law judge's conclusions, we affirm the administrative law judge's determination to accord diminished weight to the opinion of Dr. Kraynak as this determination is rational and supported by substantial evidence. Accordingly, we affirm the administrative law judge's

determination that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(b)(2)(iv).

Further, because claimant has not otherwise challenged the administrative law judge's credibility determinations regarding total disability, we affirm the administrative law judge's determination that claimant failed to satisfy his burden of demonstrating total respiratory disability pursuant to Section 718.204(b)(2). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Taylor*, 12 BLR at 1-87; *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986) (*en banc*); Decision and Order at 10-11. Consequently, because the administrative law judge's determination that claimant failed to affirmatively establish total respiratory disability at Section 718.204(b), a requisite element of entitlement under Part 718, is rational, contains no reversible error, and is supported by substantial evidence, we affirm the administrative law judge's determination that claimant's entitlement to benefits is precluded. *See* 20 C.F.R. §718.204(b)(2); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (*en banc*).[3]

[3] Our affirmance of the administrative law judge's determination that claimant failed to establish total respiratory disability at Section 718.204(b) precludes the need to address claimant's arguments with respect to the administrative law judge's findings concerning length of coal mine employment and the existence of pneumoconiosis under Section 718.202(a). *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (*en banc*).

Accordingly, the Decision and Order – Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge