BRB No. 99-0572 BLA

DOMIE B. MUSCARA	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
D & F COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
AMERICAN MINING INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Sean B. Epstein (Pietragallo, Bosick & Gordon), Pittsburgh, Pennsylvania, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (98-BLA-0578) of Administrative Law Judge Ralph A. Romano awarding benefits in 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). The administrative law judge credited claimant with seventeen years of coal mine employment and adjudicated this claim

pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b). The administrative law judge also found the evidence sufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) and (c). Accordingly, the administrative law judge awarded benefits. On appeal, employer challenges the administrative law judge's finding that the evidence is sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a brief 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).

Employer contends that the administrative law judge erred in finding that the evidence is sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). We disagree. In *Bonessa v. United States Steel Corp.*, 884 F.2d 756, 13 BLR 2-23 (3d Cir. 1989), the United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, held that a miner must prove the causal connection of pneumoconiosis and total disability at 20 C.F.R. §718.204 by showing that the disease is a "substantial contributor" to the disability. The administrative law judge considered the medical reports of Drs. Galgon, Kraynak and Rashid. Whereas Dr. Kraynak opined that claimant suffers from a totally disabling respiratory impairment due to pneumoconiosis, Claimant's Exhibits 1, 7, Dr. Galgon opined that claimant does not suffer from a disabling impairment due to pneumoconiosis, Employer's Exhibit 4. Dr. Rashid diagnosed an obstructive pulmonary disease due to work in the mines and smoking, and opined that claimant suffers from a significant

[1]Inasmuch as the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §§718.202(a)(1), 718.203(b) and 718.204(c) are not challenged on appeal, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

impairment which renders him unable to work around mines. Director's Exhibit 13.

The administrative law judge properly accorded greater weight to the opinions of Drs. Kraynak and Rashid than to the contrary opinion of Dr. Galgon because he found them to be better supported by the underlying documentation.[2] *See Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983). In addition, the administrative law judge permissibly discredited Dr. Galgon's opinion because he found it not to be well reasoned.[3] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields, supra*; *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Furthermore, the administrative law judge permissibly discredited the opinion of Dr. Galgon concerning the cause of claimant's disability because the doctor's underlying premise, that claimant does not suffer from pneumoconiosis, is inaccurate.[4] *See Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986); *but see Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995); *Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994); *Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. l990).[5] Thus, we reject employer's assertion that the administrative law judge violated the Administrative

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[2]The administrative law judge stated that "[t]he opinions of Drs. Kraynak and Rashid...are supported by the chest x-ray readings and the pulmonary function testing." Decision and Order at 9.

[3]The administrative law judge stated that Dr. Galgon "fails to adequately explain how he is able to render [his] conclusion regarding the etiology of [claimant's] pulmonary impairment." Decision and Order at 9.

[4]The administrative law judge found that Dr. Galgon's "opinion is not persuasive in that he finds the absence of pneumoconiosis, while I have found, based upon the positive chest x-ray readings by highly qualified physicians, that the existence of the disease has been established." Decision and Order at 9.

[5]The instant case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, which has not adopted the holding of the United States Court of Appeals for the Fourth Circuit in *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995). Thus, we reject employer's assertion that the administrative law judge erred in discrediting the opinion of Dr. Galgon on the ground that the administrative law judge's consideration of the doctor's opinion is not in accordance with *Ballard,* in light of our contrary case law. *See Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986).

Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), by failing to provide an adequate explanation for discrediting Dr. Galgon's opinion.

Finally, employer asserts that Dr. Rashid's opinion is insufficient to establish total disability due to pneumoconiosis in accordance with *Bonessa* because Dr. Rashid did not specifically state whether or not pneumoconiosis is a "substantially contributing factor" to claimant's disability.[6] Contrary to employer's assertion, the administrative law judge drew a permissible inference from the opinion of Dr. Rashid that claimant "has established that he is totally disabled as a result of coal worker's (sic) pneumoconiosis."[7] Decision and Order at 9; *see Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg, supra*; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Thus, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence is sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). *See Bonessa, supra*.

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[6]Employer asserts that the opinion of Dr. Rashid must be discredited because Dr. Rashid relied on an inaccurate smoking history. The administrative law judge observed that "Claimant testified that he smoked cigarettes for fifteen to twenty years, at the rate of one and a half packs per day." Decision and Order at 3. The administrative law judge also observed that Dr. Rashid "recorded...a cigarette smoking history of one pack per day from 1948 to 1982." *Id*. at 9. Since the administrative law judge considered the smoking history referenced in the report of Dr. Rashid and yet did not find that Dr. Rashid's opinion should be discredited, *see Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988), we reject employer's assertion that the opinion of Dr. Rashid must be discredited because Dr. Rashid relied on an inaccurate smoking history.

[7]The administrative law judge stated, "[b]ased upon the reports and medical opinions of Drs. Kraynak and Rashid, I find that [claimant] has established that he is totally disabled as a result of coal worker's (sic) pneumoconiosis." Decision and Order at 9. As previously noted, Dr. Rashid diagnosed an obstructive pulmonary disease due to work in the mines and smoking, and opined that claimant suffers from a significant impairment which renders him unable to work around mines. Director's Exhibit 13.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge