BRB No. 99-0669 BLA

PAUL H. MIZOK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
J.J. SAVAGE STRIPPING COMPANY	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Harry T. Coleman (Abrahamsen, Moran & Conaboy, P.C.), Scranton, Pennsylvania, for claimant.

Albert E. Nicholls, Jr. (Hughes, Nicholls & O'Hara), Dunmore, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-1934) of Administrative Law Judge Robert D. Kaplan denying benefits 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). The administrative law judge, based on the parties' stipulation, credited claimant with twenty 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 insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The

administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant also challenges the administrative law judge's finding that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate 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).

Claimant contends that the administrative law judge erred in finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). We disagree. The administrative law judge considered the medical reports of Drs. Davis, Levinson and Moran. Drs. Davis and Moran opined that claimant suffers from pneumoconiosis. Claimant's Exhibits 1, 3. In a medical report dated January 16, 1997, Dr. Levinson opined that claimant suffers from "chronic obstructive pulmonary disease...due to prior history of cigarette smoking." Director's Exhibit 11. However, in a subsequent medical report dated May 19, 1998, Dr. Levinson opined that claimant suffers from "chronic obstructive pulmonary disease with mild lung restriction...due to coal dust inhalation from prior coal mine employment as well as the prior cigarette smoking history." Director's Exhibit 30.

[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)-(3) and 718.204(c)(1)-(3) are not challenged on appeal, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The administrative law judge permissibly discredited Dr. Levinson's 1998 opinion because he found it to be based on an inaccurate smoking history.[2] *See Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988). Further, the administrative law judge permissibly discredited the opinions of Drs. Davis and Moran because he found them not to be well reasoned.[3] *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); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, we reject claimant's assertion that the administrative law judge erred in discrediting the opinions of Drs. Davis and Moran. Moreover, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, we hold that the administrative law judge properly denied benefits under 20 C.F.R. Part 718.[4] *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

---

[2]The administrative law judge stated that "at the hearing Claimant testified that he had a smoking history of 31 to 33 pack-years." Decision and Order at 7. The administrative law judge also stated that "[t]his is close to what [claimant] initially reported to Dr. Levinson and about twice what he reported to Dr. Levinson at their second meeting." *Id*. The administrative law judge found that "Claimant's admitted smoking history substantially exceeds that which Dr. Levinson relied on in his 1998 report." *Id*.

[3]The administrative law judge stated that although "I infer that Dr. Moran's reference to exposure to 'silica hazard' denotes Claimant's exposure to coal dust in his coal mine employment..., Dr. Moran's reports provide no information regarding the extent of the coal mine employment history on which the physician relied in making his diagnosis." Decision and Order at 6. Further, the administrative law judge stated that "Dr. Davis did not clearly identify or describe the laboratory testing on which he relied, did not report his clinical findings, and did not provide a rational basis for his diagnosis of pneumoconiosis." *Id*. at 7.

[4]In view of our disposition of the case at 20 C.F.R. §718.202(a), we decline to address claimant's contentions with regard to 20 C.F.R. §718.204(c)(4). *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge