BRB No. 99-0918 BLA

RALPH ASHER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CALVARY COAL COMPANY, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
NATIONAL UNION FIRE INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondent	)	
	)	
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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Paul E. Jones (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (98-BLA-0050) of Administrative Law Judge Rudolf L. Jansen 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 found that the parties stipulated to 11.49 years of coal mine employment, and based on the filing date of the claim, applied the regulations found at 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c) and the existence of pneumoconiosis at 20 C.F.R. §718.202(a). Accordingly, benefits were denied. Claimant appeals, contending that the administrative law judge erred in failing to find the existence of pneumoconiosis and total disability. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), is not participating in this appeal.

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, rational and consistent with applicable law, they are binding upon this Board and may not be disturbed. 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 contends that the administrative law judge erred in failing to find the evidence sufficient to establish total disability at Section 718.204(c)(1) based on the qualifying pulmonary function studies. Claimant, however, fails to allege with specificity any error on the part of the administrative law judge in his weighing of the pulmonary function studies at Section 718.204(c)(1). Therefore, we affirm the administrative law judge's finding that the pulmonary function studies failed to establish total disability at Section 718.204(c)(1). *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Barnes v. Director, OWCP*, 19 BLR 1-71 (1995); *Fish v. Director, OWCP*, 6 BLR 1-10 (1983).[1]

Claimant next contends that the administrative law judge erred in failing to find total disability established based on the medical opinion evidence. Specifically, claimant contends that the administrative law judge erred in failing to identify the exertional requirements of claimant's usual coal mine employment and compare these requirements to the medical reports assessing disability, in failing to consider age, education and work experience in determining claimant's ability to perform comparable and gainful work, and

[1] The administrative law judge's findings at Section 718.204(c)(2) and (3) are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

in failing to find that claimant had become totally disabled since his initial diagnosis of pneumoconiosis inasmuch as pneumoconiosis is a progressive and irreversible disease.

In weighing the medical opinions at Section 718.204(c)(4), the administrative law judge permissibly credited the opinions of the physicians with superior credentials[2] and the opinions of those who gave unequivocal diagnoses of nondisability. *See* Decision and Order at 11; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988).[3] Accordingly, the administrative law judge properly concluded that as none of the physicians rendered opinions sufficient to establish total disability, the administrative law judge properly found that claimant failed to establish total disability at subsection (c)(4).[4] The administrative law judge then properly

[2] Earlier in the Decision and Order, in his weighing of the evidence at Section 718.202(a)(4), the administrative law judge found that the physicians with the best qualifications were Drs. Dahhan, Powell, Fino and Branscomb, a finding which is unchallenged on appeal. Decision and Order at 10; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[3] The evidence of record contains the opinions of eight physicians. The administrative law judge determined that "Drs. Anderson, Dahhan, Westerfield and Branscomb all believed that [claimant] retained the respiratory capacity to perform his usual coal mine work." Decision and Order at 11; Employer's Exhibits 8, 10; Director's Exhibits 14, 43, 49. In addition, the administrative law judge found that "Dr. Baker stated that [claimant] 'may' be capable of performing his work where the exertion was only occasional." Decision and Order at 11; Director's Exhibits 43, 15. The administrative law judge found that "Dr. Powell did not provide an opinion on the extent of [claimant's] respiratory impairment, although he did not exclude coal mining as a cause." Decision and Order at 11; Employer's Exhibit 11. Likewise, the administrative law judge found that "Drs. Myers and Fino did not describe the extent or severity of any impairment or disability from their diagnosed conditions." Decision and Order at 11; Employer's Exhibits 6, 9; Director's Exhibits 44, 47.

[4] Claimant contends that the administrative law judge made no mention of claimant's usual coal mine employment in conjunction with Dr. Baker's opinion or with the qualifying pulmonary function studies. The administrative law judge, however, rationally accorded less weight to Dr. Baker's opinion due to its "equivocal nature" as opposed to the unequivocal descriptions of nondisability by Drs. Anderson, Dahhan, Westerfield and Branscomb. *Justice, supra*. Further, as the interpretation of the objective data requires a qualified medical expert and an administrative law judge may not substitute his expertise for that of a physician, consideration of the exertional requirements of claimant's usual coal mine employment requires a comparison with a physician's opinion, not a qualifying pulmonary function study. *See Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984).

weighed all the evidence together, both like and unlike, and found that claimant failed to establish total disability at Section 718.204(c), and therefore denied benefits. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986).

We reject claimant's contentions. None of the physicians termed claimant totally disabled or made a sufficient physical assessment from which the administrative law judge could infer total disability. *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986), *aff'd* 9 BLR 1-104 (1986); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Further, contrary to claimant's argument, the administrative law judge is not required to consider age, education or work history where, as here, he finds claimant is not totally disabled from his usual coal mine employment. *See Taylor v. Evans and Gambrel Co., Inc.*, 12 BLR 1-83 (1988). Nor, contrary to claimant's general contention, does a mere

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Claimant also contends that the administrative law judge erred in finding claimant able to perform his usual coal mine employment without considering the physical requirements of such work. Where, as here, however, the administrative law judge credits opinions which discuss claimant's usual coal mine employment and which find that claimant can perform that coal mine employment, it is not necessary for the administrative law judge to compare the opinions against the exertional requirements of claimant's work. *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *see Eagle v. Armco Inc.*, 943 F.2d 509, 15 BLR 2-201 (4th Cir. 1991); *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991). Moreover, the administrative law judge did discuss the exertional requirements of claimant's usual coal mine employment. Decision and Order at 4. Further, contrary to claimant's contention, the inadvisability of a return to coal dust exposure does not establish total disability. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989).

diagnosis of simple pneumoconiosis give rise to a presumption of total disability. *Gee, supra*.

As claimant failed to establish total disability, an essential element of entitlement, we affirm the denial of benefits. *Gee, supra*. As we affirm the denial of benefits on this basis, we need not address claimant's other contentions at Section 718.202(a)(1) and (4).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge