BRB No. 00-0751 BLA

WILLIAM G. MOOREFIELD, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WESTMORELAND COAL 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 Denying Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

William G. Moorefield, Jr., Pennington Gap, Virginia, *pro se*.

Kathy L. Snyder and Douglas A. Smoot (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (99-BLA-0601) of Administrative Law Judge Thomas F. Phalen, Jr. on a duplicate claim[1] filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety

[1] Claimant is William G. Moorefield, Jr., who filed his first application for benefits on April 9, 1992, which was finally denied in a Decision and Order by Administrative Law Judge Lawrence E. Gray issued on March 9, 1994. Director's Exhibit 26. Claimant did not appeal this denial. Subsequently, claimant filed a second application for benefits on March 21, 1997, which is the subject of the appeal before us. Director's Exhibit 1.

Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act).[2] Adjudicating this duplicate claim pursuant to 20 C.F.R. Part 718 (2000), the administrative law judge considered all of the newly submitted evidence since the prior denial of the claim and found that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a) (2000). Therefore, the administrative law judge determined that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating that she will not participate in this appeal.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on March 2, 2001, to which the Director and employer have responded. The Director's brief, dated March 22, 2001, asserts that the revised regulations at issue do not affect the outcome of this case. However, employer asserts, in its brief dated March 23, 2001, that the revised regulations set forth at 20 C.F.R. §718.201(c) (defining pneumoconiosis as a latent and progressive disease), and 20 C.F.R. §718.204(a) (specifying that a nonrespiratory disability is irrelevant in determining whether a miner is totally disabled due to pneumoconiosis) may impact the disposition of this case.

Based upon the briefs submitted by the parties, and our review, we hold that the disposition of this case is not impacted by the challenged regulations. A review of the record

[2] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

reveals no evidence implicating Section 718.201(c). Furthermore, the only issue previously adjudicated against claimant was the existence of pneumoconiosis pursuant to Section 718.202(a) (2000). Therefore, the revised regulation under Section 718.204(a), which involves the determination of whether total disability and total disability causation are present, is inapplicable to the instant case. Consequently, contrary to employer's assertion, Section 718.204(a) is not implicated in this case. In addition, we conclude that none of the other challenged regulations affects the outcome of this case based on our review, therefore, we will proceed to adjudicate the merits of this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are 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).

Pursuant to Section 725.309 (2000), the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, articulated the standard for adjudicating duplicate claims, holding that to assess whether a material change in conditions is established, the administrative law judge must consider all of the new evidence, favorable and unfavorable, to determine whether the miner has proven at least one of the elements of entitlement previously adjudicated against him. *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), *cert. denied,* 117 S.Ct. 763 (1997). In this case, the previous denial was based on claimant's failure to establish the existence of pneumoconiosis. *See* Director's Exhibit 26.

After consideration of the Decision and Order and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence, contains no reversible error, and therefore, it is affirmed. Relevant to Section 718.202(a)(1) (2000), the x-ray evidence submitted since the previous denial consists of twenty-eight interpretations of five chest x-ray films. There are a total of twenty-seven negative readings provided by seven Board-certified radiologists who are also B-readers and seven B-readers. Director's Exhibits 11, 12, 19, 20, 22, 28, 29, 31, 32, 37, 39, 42, 45, 47, 48, 52; Employer's Exhibits 1-4, 6, 8. After considering the qualitative and quantitative nature of the x-ray evidence and assessing the readings rendered by the Board-certified radiologists who are also B-readers, the administrative law judge properly found that the sole positive x-ray reading was outweighed by the twenty-seven negative interpretations. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP,* 991 F.3d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); Decision and Order at 11. Consequently, the administrative law judge accorded probative weight to the negative

readings by the radiologists with dual qualifications, and thus concluded that the existence of pneumoconiosis was not established under Section 718.202(a)(1) (2000). *See Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988). Because the administrative law judge properly conducted a qualitative review of the x-ray evidence by considering the radiological expertise of the readers, we affirm the administrative law judge's Section 718.202(a)(1) (2000) determination. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 11.

Relevant to Section 718.202(a)(2) (2000), the administrative law judge properly found that the newly submitted evidence contains no biopsy evidence. *See* 20 C.F.R. §718.202(a)(2) (2000); Decision and Order at 11. Additionally, under Section 718.202(a)(3) (2000), the administrative law judge correctly noted that the presumption at Section 718.304 is inapplicable because there is no evidence of complicated pneumoconiosis and, as this is a living miner's claim filed after January 1, 1982, none of the presumptions referenced in Section 718.202(a)(3) (2000) are applicable. *See* 20 C.F.R. §718.202(a)(3) (2000). Hence, we affirm the administrative law judge's findings pursuant to Sections 718.202(a)(2) and (a)(3) (2000) inasmuch as these determinations are rational and supported by the evidentiary record. *See* 20 C.F.R. §§718.202(a)(2), (3) (2000), 718.304, 718.305, 718.306; Decision and Order at 11.

Turning to the administrative law judge's consideration of the medical opinion evidence pursuant to Section 718.202(a)(4) (2000), there are seven medical opinions submitted since the previous denial. Dr. Smiddy diagnosed the existence of pneumoconiosis. Director's Exhibit 49. Similarly, Dr. Paranthaman diagnosed chronic obstructive pulmonary disease due in part to bronchial asthma and aggravated by coal dust exposure. Director's Exhibits 7, 8, 39. Drs. Castle, Dahhan, Fino, Jarboe, and Hippensteel each opined that there is no evidence of coal workers' pneumoconiosis. Director's Exhibits 22, 26, 28, 29, 30, 32, 33, 36, 39, 40, 42, 43, 49; Employer's Exhibits 4, 6-8.

The administrative law judge, within a rational exercise of his discretion, determined that Dr. Paranthaman's opinion was equivocal because the physician opined that claimant's twelve years of coal mine employment "could have" aggravated his reactive airways disease. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order at 12. Although the administrative law judge accorded "some weight" to Dr. Smiddy's opinion based on his medical qualifications, he permissibly found that Dr. Smiddy's opinion was less persuasive than the opinions of Drs. Castle, Dahhan, Fino, Jarboe, and Hippensteel because these physicians have superior medical expertise and rendered well documented and reasoned reports based on thorough examinations of claimant as well as reviews of all of the medical evidence of record. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998);

Clark v. Karst-Robbins Coal Co., 12 BLR 1-149 (1989); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); Decision and Order at 12. Moreover, the administrative law judge reasonably found that the opinions of Drs. Castle, Dahhan, Fino, Jarboe, and Hippensteel, that claimant does not have coal worker's pneumoconiosis, were supported by the overwhelmingly negative x-ray evidence and the majority of pulmonary function and arterial blood gas studies. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *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 12. Inasmuch as the administrative law judge rationally found that the opinions of Drs. Castle, Dahhan, Fino, Jarboe, and Hippensteel were entitled to dispositive weight, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) (2000).

Inasmuch as the administrative law judge properly considered all of the newly submitted evidence of record to determine that claimant failed to establish the existence of pneumoconiosis, an element that was previously adjudicated against claimant, we affirm the administrative law judge's findings that claimant, therefore, failed to establish a material change in conditions, the threshold requirement for consideration of all of the evidence on the merits. *See* 20 C.F.R. §725.309 (2000); *Rutter, supra*; *see Island Creek Coal v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000).

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