

BRB No. 03-0601 BLA

CECIL THOMAS)
)
 Claimant-Petitioner)
)
 v.)
)
 RAWL SALES & PROCESSING) DATE ISSUED: 05/14/2004
)
 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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Cecil Thomas, Belfry, Kentucky, *pro se*.

Natalee A. Gilmore (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order – Denying Benefits (02-BLA-0355) of Administrative Law Judge Rudolf L. Jansen on modification of 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).¹ The

¹ 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 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All

administrative law judge credited claimant with thirty-one years of coal mine employment. The administrative law judge initially found that the evidence of record established a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b). He thus determined that claimant established a ground for modification at 20 C.F.R. §725.310 (2000) of the district director's prior denial of benefits.² Considering the claim on its merits under 20 C.F.R. Part 718, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis at 20 C.F.R. ' 718.202(a) pursuant to *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000) or total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

In response to claimant's appeal, employer urges the Board to affirm the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has not filed a brief in the 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge*

citations to the regulations, unless otherwise noted, refer to the amended regulations.

² Claimant filed the instant claim for benefits on November 21, 2000. Director's Exhibit 1. The district director denied the claim on February 23, 2001, based on claimant's failure to establish any element of entitlement. Director's Exhibit 15. On February 22, 2002, claimant submitted additional evidence and requested modification of the district director's denial. Director's Exhibit 20. The district director issued a March 29, 2002 Proposed Decision and Order Denying Request for Modification and determined that claimant failed to establish a ground for modification at 20 C.F.R. §725.310 (2000). Director's Exhibit 22. Claimant disagreed with the district director's decision and the case was transferred to the Office of Administrative Law Judges for a hearing. Director's Exhibit 23, 24, 25, 29.

Coal Co., 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a).

In order to establish entitlement to benefits under Part 718, claimant must establish that he has pneumoconiosis, that the pneumoconiosis arose from his coal mine employment, and that he is totally disabled by the disease. 20 C.F.R. §§718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Failure to establish any element of entitlement will result in the denial of benefits.

The administrative law judge found, *inter alia*, that the relevant medical evidence failed to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). The relevant medical evidence consists of the opinions by Drs. Myers,³ Baker, and Alam, who attributed claimant's disability or impairment to his coal mine employment, Director's Exhibits 12, 14, 10, Claimant's Exhibit 1, and the opinions by Drs. Skolnick,⁴ Fino, Dahhan, Repsher, Jarboe, and Castle, who attributed any disability or impairment to causes unrelated to claimant's coal mine employment, including previous pulmonary emboli, obesity, hypertension, reactive airway disease, and dilated left atrium. Director's Exhibit 13, Employer's Exhibits 1, 2, 5-9, 11, 13-17. The administrative law judge initially found that the opinions of Drs. Castle, Dahhan, and Jarboe were well reasoned and well documented and thus entitled to full weight. He also noted that these doctors are "pulmonary specialists." Decision and Order at 18. Weighing the medical opinions at 20 C.F.R. §718.204(c), the administrative law judge found, within his discretion, that the opinions by Drs. Alam and Baker were outweighed by the contrary medical opinions of record, including the opinions by

³ Dr. Myers diagnosed, *inter alia*, coal workers' pneumoconiosis and stated that claimant's "restrictive defect in ventilation is no doubt directly related to his coal dust exposure, which ranges in the Class II to III area." Director's Exhibit 12. Dr. Myers added that claimant "should avoid further dust exposure even though he continues to work at the present time, since he will no doubt progress." *Id.* At 20 C.F.R. §718.204(b), the administrative law judge found that Dr. Myers did not discuss claimant's ability to engage in his coal mine employment at 20 C.F.R. §718.204(b). Decision and Order at 17. Thus, the administrative law judge did not weigh at 20 C.F.R. §718.204(c) Dr. Myers's opinion on disability causation that claimant's Class II to Class III ventilatory defect was related to his exposure to coal dust. *Id.* at 18.

⁴ Substantial evidence in the record supports the administrative law judge's decision to accord diminished weight to Dr. Slotnick's June 28, 1999 opinion because its second page is missing and the report is, therefore, incomplete. Decision and Order at 6, 13.

Drs. Castle, Dahhan, and Jarboe, who attributed claimant's impairment to causes unrelated to his coal mine employment. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997). Specifically, the administrative law judge found:

In sum, the majority of the physician opinions found Claimant's disability causation to be from conditions unrelated to his coal mine employment. Those opinions were written by specially qualified physicians who had the benefit of reviewing additional medical data, as their reports were more recent than those of Drs. Alam and Baker. I find the evidence fails to support a finding of total disability due to pneumoconiosis.

Decision and Order at 18. The professional qualifications of Drs. Alam and Baker are not contained in the record, although the record shows that Drs. Castle, Dahhan, and Jarboe are Board-certified in internal medicine and pulmonary diseases, Employer's Exhibits 14-16, as are Drs. Fino and Repsher, Employer's Exhibits 13, 17. We hold that the administrative law judge properly considered the relative qualifications of the physicians, *Milburn Colliery Co. v. Hicks*, 138 F.3d 524 at 536, 21 BLR 2-323 at 2-341 (4th Cir. 1998), and the recency and comprehensiveness of their opinions relevant to the cause of claimant's impairment, *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989). Further, given the administrative law judge's finding that Dr. Baker's July 14, 1999 opinion and Dr. Alam's January 3, 2001 opinion were outweighed by the more recent and more comprehensive opinions by Dr. Castle (December 27, 2002), Dr. Dahhan (October 23, 2002, January 8, 2003), and Dr. Jarboe (January 1, 2003, January 7, 2003), we hold harmless the administrative law judge's failure to additionally weigh Dr. Myers' April 24, 1999 opinion as this error cannot affect the outcome of the case. *Larioni v. Director, OWCP* 6 BLR 1-1276 (1984).

Substantial evidence supports the administrative law judge's finding that claimant failed to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff=g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993), and we thus affirm that finding. Because claimant failed to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), an essential element of entitlement, we further affirm the administrative law judge's denial of benefits in this case. *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-5. In light of our decision to affirm the administrative law judge's denial of benefits on the merits of the case, based on a finding of no disability causation at 20 C.F.R. §718.204(c), we need not address the administrative law judge's findings at 20 C.F.R. §718.202 and 20 C.F.R. §725.310 (2000).

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge