BRB No. 04-0923 BLA

LUTHER LAWSON	)	
	)	
Claimant-Respondent	)	
v.	)	
	)	
SHAMROCK COAL COMPANY	)	DATE ISSUED: 05/25/2005
	)	
and	)	
	)	
SUN COAL COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
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 (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd, PLLC), Washington, D.C, for employer/carrier.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor, Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (2003-BLA-6098) of Administrative Law Judge Rudolf L. Jansen (the administrative law judge) on a subsequent 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 newly submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and total respiratory disability pursuant to 20 C.F.R. §718.204(b), and thereby, was insufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Accordingly, the administrative law judge denied benefits on the claim.

The relevant procedural history of this claim is as follows. Claimant filed his first claim with the Department of Labor (DOL) on August 6, 1993. Director's Exhibit 1. Following a hearing, the administrative law judge denied benefits in a Decision and Order dated October 13, 1995. The administrative law judge found that the evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4)(2000), and was insufficient to establish total respiratory disability pursuant to Section 718.204(c)(1)-(4) (2000). *Id.* Claimant filed this subsequent claim with the DOL on August 8, 2001. Director's Exhibit 3. Following another hearing, the administrative law judge issued a Decision and Order dated August 6, 2004, wherein he found that the newly submitted evidence of record failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4), and failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge found that the newly submitted evidence of record failed to establish a change in an applicable condition of entitlement pursuant to Section 725.309(d), and thereby, denied the subsequent claim. Claimant then filed this appeal with the Board.

On appeal, claimant contends that the administrative law judge erred in finding that the newly submitted x-ray evidence and medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and (4). Claimant also contends that the administrative law judge erred when he found that the newly submitted medical opinion evidence of record failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). Additionally, claimant contends that the DOL failed to provide him with a complete, credible pulmonary evaluation sufficient to substantiate his claim pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b), because the administrative law judge found Dr. Hussain's opinion to be poorly documented and reasoned. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director) responds, asserting that Dr. Hussain's medical report satisfied his obligation to provide claimant with a complete and

credible pulmonary evaluation pursuant to Section 413(b) because Dr. Hussain provided claimant with a complete and credible evaluation.[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 first contends that the administrative law judge erred in failing to find that the new x-ray evidence established the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant asserts that the administrative law judge improperly relied upon the interpretations by physicians with superior credentials and the numerical superiority of the negative readings, noting that the Board has held an administrative law judge is not required to defer to doctors with superior qualifications, nor is he required to accept as conclusive the readings of x-rays based on their numerical superiority. Claimant's Brief at 2-3.

The administrative law judge considered the six interpretations of four x-rays in conjunction with the readers' radiological qualifications and noted that there were four negative interpretations and two positive interpretations.[2] Decision and Order at 10. Additionally, the administrative law judge noted that of the four negative readings, two were by physicians who were Board-certified radiologists and B-readers, while two were by B-readers. *Id*; Director's Exhibits 15, 16; Employer's Exhibits 2, 4. The administrative law judge found that the two positive readings were by physicians who possessed no special radiological qualifications. Decision and Order at 10; Director's Exhibits 13, 14. Weighing the conflicting evidence, the administrative law judge permissibly exercised his discretion, as trier-of-fact, by giving greater weight to the interpretations by the physicians who possessed superior radiological qualifications. The administrative law judge, therefore, performed a

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[1] The administrative law judge's findings that the new evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2)-(3) and failed to establish a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] An additional reading consisted of Dr. Sargent's rereading of Dr. Hussain's November 21, 2001 x-ray, noting only that the film quality was "1", the highest quality possible, without commenting on whether the film was positive or negative for the existence of pneumoconiosis. Director's Exhibit 14.

proper qualitative and quantative analysis of the x-ray interpretation evidence. *See* 20 C.F.R. §718.202(a)(1); *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 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); *Staton v. Norfolk and Western Railway Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1- 105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc)*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 10. In addition, we reject claimant's contention that the administrative law judge "may" have "selectively analyzed" the x-ray evidence. Claimant's Brief at 3. Claimant cites to nothing in the record to support his speculation and a review of the evidence together with the administrative law judge's Decision and Order does not reveal a selective analysis of the x-ray evidence. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-5 (2004). We affirm, therefore, the administrative law judge's finding that the newly submitted x-ray evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(1).

Claimant next challenges the administrative law judge's findings that the newly submitted medical opinion evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) based upon the report of Dr. Baker. Claimant asserts that Dr Baker diagnosed coal workers' pneumoconiosis, basing his diagnosis on physical examination, medical and work histories, pulmonary function study, arterial blood gas study, and chest x-ray. Claimant's Brief at 4-5.

Upon consideration of Dr. Baker's opinion the administrative law judge stated:

> Dr. Baker diagnosed Claimant with pneumoconiosis based on a positive chest x-ray and a history of coal dust exposure. As Dr. Baker provided no other basis for his diagnosis, I find his opinion to be poorly reasoned. *Cornett*, 227 F.3d at 576. Dr. Baker also diagnosed Claimant with COPD and bronchitis. He did not opine as to the etiology of these conditions. Therefore, I find Dr. Baker's opinion to be incomplete regarding the diagnosis of COPD and bronchitis and assign it less weight.

Decision and Order at 12; Director's Exhibit 13. In addressing the rest of the medical opinion evidence, the administrative law judge found that while Drs. Baker and Hussain opined that claimant suffered from pneumoconiosis, Drs. Dahhan and Rosenberg opined that claimant did not have pneumoconiosis or a coal induced lung disease. Decision and Order at 11-12; Director's Exhibits 13, 14, 15; Employer's Exhibits 4, 8. In sum, the administrative law judge concluded that claimant failed to establish the existence of pneumoconiosis at

Section 718.202(a)(4) as the opinions of Drs. Dahhan and Rosenberg were better reasoned and, as such, outweighed the poorly reasoned opinions of Drs. Baker and Hussain. Decision and Order at 12. This was proper. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Clark*, 12 BLR 1-149, 1-155; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988).

The administrative law judge did not abuse his discretion when he held that Dr. Baker did not identify any evidentiary basis for his diagnosis of pneumoconiosis, beyond his own positive x-ray interpretation and claimant's coal mine employment history. Further, the administrative law judge did not err in discounting Dr. Baker's diagnosis for this reason, particularly since the administrative law judge found that Dr. Baker's positive x-ray reading was outweighed by the contrary readings by doctors with superior radiological credentials. Decision and Order at 12; Claimant's Exhibit 2; *see Eastover Mining Co. v. Williams*, 338 F.2d 501, 22 BLR 2-625 (6th Cir. 2003); *Worhach*, 17 BLR at 1-110; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Dillon*, 11 BLR 1-113. Moreover, the administrative law judge properly accorded less weight to Dr. Baker's opinion as not fully explained. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Pettry v. Director, OWCP*, 14 BLR 1-98 (1990); *Clark*, 12 BLR at 1-155; *Cooper v. Director, OWCP*, 11 BLR 1-95 (1988)(Ramsey, CJ, concurring). We, therefore, reject claimant's contention regarding Dr. Baker's opinion and we affirm the administrative law judge's finding that the newly submitted medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).[3]

Claimant next challenges the administrative law judge's finding that the newly submitted medical opinion evidence of record failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). Claimant asserts that Dr. Baker's opinion is sufficient to meet his burden of establishing total respiratory disability pursuant to Section 718.204(b)(2)(iv) as it is based on extensive documentation. Claimant also contends that the administrative law judge erred in failing to consider the opinion in conjunction with the exertional requirements of claimant's usual coal mine employment.

Dr. Baker found that claimant had a Class 2 impairment based on his pulmonary function study results and also found: according to the Guides for the Evaluation of Permanent Impairment, "that persons who develop pneumoconiosis should limit further

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[3] Claimant did not specifically challenge the administrative law judge's finding concerning Dr. Hussain's opinion at 20 C.F.R. §§718.202(a)(4) and 718.204(b)(2)(iv). *See Cox v. Benefits Review Board*, 841 F.2d 706, 11 BLR 2-86 (6th Cir. 1988); *Coen*, 7 BLR 1-30; *Skrack*, 6 BLR 1-710.

exposure to the offending agent[,]" "which would imply that [claimant] is 100% occupationally disabled for work in the coal mine industry or similar dusty occupations." Director's Exhibit 13. The administrative law judge permissibly interpreted Dr. Baker's opinion as an opinion contraindicating further coal dust exposure which is insufficient to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). Decision and Order at 13; *see Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988); *Defore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1988). Further, contrary to claimant's argument, the administrative law judge did address the exertional requirements of claimant's usual coal mine employment, Decision and Order at 5, although he noted that Dr. Baker did not address whether claimant could perform his usual coal mine employment, Decision and Order at 13. On weighing Dr. Baker's opinion along with the other medical opinion evidence and the non-qualifying pulmonary function or blood gas studies, the administrative law judge found that the evidence, as a whole, failed to establish a totally disabling respiratory impairment. This was reasonable. *See White*, 23 BLR 1-1, 1-6; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon. en banc*, 9 BLR 1-236 (1987).

Moreover, contrary to claimant's contentions, an administrative law judge was not required to consider claimant's age, education, and work experience in determining whether claimant has established that he is totally disabled from his usual coal mine employment. *See White*, 23 BLR 1-1; *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988). Nor, contrary to claimant's assertion does a finding of total disability necessarily follow from a diagnosis of pneumoconiosis. *White*, 23 BLR 1-1. We reject, therefore, claimant's contentions, and we affirm the administrative law judge's finding that the newly submitted medical opinion evidence fails to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv).

Finally, claimant asserts that because the administrative law judge did not credit Dr. Hussain's November 21, 2001 medical opinion which was provided by the DOL, "the Director has failed to provide claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 7-8. The Director responds that he "is only required to provide claimant with a complete and credible examination, not a dispositive one." Director's Brief at 3. The record reflects that Dr. Hussian conducted an examination and a full range of testing required by the regulations, and that he addressed each element of entitlement of the DOL examination form. 20 C.F.R. §§718.101(a); 718.104, 725.406(a); Director's Exhibit 12. Claimant does not allege, and the administrative law judge did not find, that Dr. Hussain's report was incomplete. Rather, the administrative law judge found that Dr. Hussain's report was outweighed by medical opinions which he found to be better reasoned and documented. Decision and Order at 12-14. Thus, the administrative law judge never rejected Dr. Hussain's opinion outright. Instead, the administrative law judge found that Dr. Hussain's diagnosis of pneumoconiosis

was based on a positive x-ray which was contrary to the weight of the negative readings by better qualified physicians. *See Williams*, 338 F.3d at 514, 22 BLR 2-644. As the Director asserts, the mere fact that the administrative law judge found other medical opinions more persuasive does not mean that the Director failed to satisfy his statutory obligation to provide claimant with a medical opinion which addressed all elements of entitlement. *See Cline v. Director, OWCP*, 917 F. 2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *see also Barnes v. ICO Corp.*, 31 F.3d 673, 18 BLR 2-319 (8th Cir. 1994); *Newman v. Director, OWCP*, 745 F. 2d 1162, 1166, 7 BLR 2-25 2-31 (8th Cir. 1984). In the instant case, Dr. Hussain's report addressed the requisite elements of entitlement. We reject, therefore, claimant's contention that the Director did not fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. *See Cline*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105. We affirm, therefore, the administrative law judge's finding that the evidence failed to establish a change in an applicable condition of entitlement pursuant to Section 725.309(d), and thereby, his denial of this subsequent claim.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge