BRB No. 06-0811 BLA

JOHNNY A. RATLIFF	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ROYALTY SMOKELESS COAL COMPANY	)	DATE ISSUED: 05/24/2007
	)	
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 Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams & Rutherford), Norton, Virginia, for claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-6550) of Administrative Law Judge Richard T. Stansell-Gamm 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). This case involves a subsequent claim filed on April 22, 2003.[1] The administrative law judge found that the newly submitted

[1] Claimant initially filed a claim for benefits with the Social Security Administration (SSA) on February 28, 1973. Director's Exhibit 1. In a decision dated

evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i) and (iv), thereby establishing that one of the applicable conditions of entitlement had changed since the date upon which claimant's prior 1985 claim became final.[2] Consequently, the administrative law judge considered claimant's current claim on the merits. The administrative law judge found that the evidence of record did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[3]

May 7, 1976, an administrative law judge from the SSA denied benefits. *Id.* The Appeals Council of the SSA affirmed the denial of benefits on March 31, 1977. *Id.* After claimant elected Department of Labor (DOL) review of his denied claim, the DOL denied the claim on June 5, 1981. *Id.* On June 11, 1981, claimant filed a request for reconsideration. *Id.* By letter dated February 26, 1982, the DOL advised claimant that he could reopen his claim if he wrote to the DOL within sixty days. *Id.* The DOL further advised claimant that if he did not file any response, the DOL would administratively close his file. *Id.* By letter dated July 9, 1985, claimant requested information regarding the status of his claim. By letter dated July 19, 1985, the DOL informed claimant that his claim was administratively closed. *Id.*

Claimant filed a second claim on July 24, 1985. Director's Exhibit 2. The district director denied the claim on January 14, 1986. *Id.* Although claimant filed a third claim on October 5, 1998, this claim was subsequently withdrawn. *See* Director's Exhibit 3. Claimant filed a fourth claim on April 22, 2003. Director's Exhibit 5.

[2] Because claimant's 1998 claim was withdrawn, it is considered not to have been filed. *See* 20 C.F.R. §725.306(b). Consequently, the administrative law judge excluded the evidence submitted in connection with claimant's 1998 claim. Decision and Order at 7 n.4.

[3] Because no party challenges the administrative law judge's findings that the evidence does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Claimant argues that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). A finding of either clinical pneumoconiosis, *see* 20 C.F.R. §718.201(a)(1), or legal pneumoconiosis, *see* 20 C.F.R. §718.201(a)(2),[4] is sufficient to support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). In his consideration of the medical opinion evidence, the administrative law judge credited the opinions of Drs. Hippensteel and Castle, that claimant did not suffer from either clinical pneumoconiosis or legal pneumoconiosis, over the contrary opinions of Drs. Rasmussen and Forehand.[5] Decision and Order at 22-25.

Clinical Pneumoconiosis

The administrative law judge found that Dr. Rasmussen's opinion was insufficient to support a finding of clinical pneumoconiosis.[6] Decision and Order at 23. Because no

[4] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

[5] The administrative law judge found that the opinions of Drs. Hatfield, Chillag, and Craft were entitled to less weight because they did not consider the most recent evidence of record. Decision and Order at 22; Director's Exhibit 1. Drs. Hatfield, Chillag, and Craft conducted their examinations on November 28, 1973, October 28, 1975, and July 3, 1979 respectively. *Id.* Because no party challenges the administrative law judge's basis for according less weight to the opinions of Drs. Hatfield, Chillag, and Craft, this finding is affirmed. *Skrack*, 6 BLR at 1-711.

[6] In a report dated June 17, 2003, Dr. Rasmussen diagnosed coal workers' pneumoconiosis. Director's Exhibit 12. However, in a subsequent report dated April 8, 2004, Dr. Rasmussen opined that a diagnosis of coal workers' pneumoconiosis could not

party challenges the administrative law judge's determination that Dr. Rasmussen's opinion is insufficient to establish the existence of clinical pneumoconiosis, this finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The administrative law judge found that Dr. Forehand diagnosed clinical pneumoconiosis based upon a positive x-ray interpretation.[7] Decision and Order at 23-24; Claimant's Exhibit 1. The administrative law judge permissibly questioned Dr. Forehand's reliance upon a positive x-ray interpretation, in light of the administrative law judge's earlier finding that the x-ray evidence of record does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Decision and Order at 20; *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). The administrative law judge, therefore, found that Dr. Forehand's opinion does not support a finding of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge properly found that Drs. Hippensteel and Castle opined that claimant did not suffer from clinical pneumoconiosis. *See* Director's Exhibit 13; Employer's Exhibits 2, 7-9. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence does not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Legal Pneumoconiosis

Claimant argues that the administrative law judge erred in finding that the medical opinion evidence does not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). As previously noted, legal pneumoconiosis includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

In his consideration of whether the medical opinion evidence established the existence of "legal" pneumoconiosis, the administrative law judge credited the opinions of Drs. Hippensteel and Castle, that claimant suffered from bronchial asthma unrelated to his coal dust exposure, because he found that their opinions were better reasoned and supported by the objective evidence than the contrary opinions of Drs. Forehand and Rasmussen. Decision and Order at 23-25; Director's Exhibit 13; Claimant's Exhibits 1, 2, Employer's Exhibits 2, 7-9. Whether a medical report is sufficiently reasoned is for the administrative law judge as the fact-finder to decide. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR

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be established. Claimant's Exhibit 2.

[7] Dr. Forehand diagnosed coal workers' pneumoconiosis based upon his positive interpretation of claimant's March 10, 2005 x-ray. Claimant's Exhibit 1.

1-46 (1985). In this case, the administrative law judge permissibly found that the opinions of Drs. Forehand and Rasmussen were entitled to less weight because they did not address the reversible nature of claimant's pulmonary function study results, a result that both Drs. Hippensteel and Castle opined was more consistent with bronchial asthma than a coal dust-related pulmonary condition. *See generally Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985) (holding that an administrative law judge may properly find a physician's opinion less probative where the physician does not adequately address the significance of all possible etiologies).

Claimant argues that the administrative law judge committed two errors in his consideration of the reports of Drs. Hippensteel and Castle. First, claimant contends that pulmonary function studies are not diagnostic of pneumoconiosis and the administrative law judge therefore erred in accepting the opinions of Drs. Hippensteel and Castle "despite their misuse of pulmonary function tests as diagnostic indicators of pneumoconiosis." Claimant's Brief at 6. Claimant's contention lacks merit. In *Piniansky v. Director, OWCP*, 7 BLR 1-171 (1984), the Board held that pulmonary function studies, while relevant to the presence or absence of a respiratory or pulmonary impairment, are not determinative of the causation of such impairment. However, in *Piniansky*, the claimant argued that his qualifying pulmonary function study alone was sufficient to establish that he was totally disabled due to an impairment related to his coal mine employment. In this case, Drs. Hippensteel and Castle did not rely upon the qualifying or non-qualifying nature of claimant's pulmonary function studies to conclude that claimant does not have pneumoconiosis. Instead, these doctors based their opinions on the finding of reversibility of claimant's pulmonary impairment after the administration of a bronchodilator, a condition the physicians opined was more consistent with bronchial asthma than with a coal dust-related pulmonary condition. Moreover, the applicable regulation requires that a physician's opinion as to the existence of pneumoconiosis be based on "objective medical evidence such as . . . pulmonary function studies . . . ." 20 C.F.R. §718.202(a)(4). Consequently, we reject claimant's contention that the administrative law judge erred in relying upon the opinions of Drs. Hippensteel and Castle because they based their opinions in part upon the results of claimant's pulmonary function studies.

Claimant also argues that the administrative law judge ignored the equivocal nature of Dr. Castle's report. Claimant notes that Dr. Castle, on page four of his December 8, 2004 report, stated:

> This report serves only for the diagnosis of pneumoconiosis and occupational lung disease and is not intended as a comprehensive evaluation of his health status.

Employer's Exhibit 2 at 4. Claimant contends that this statement effectively retracts a

diagnosis of any disorder other than pneumoconiosis, including asthma. We disagree. Dr. Castle's statement does not render his opinion regarding the existence of legal pneumoconiosis equivocal. Rather, as noted by employer, Dr. Castle's statement informs claimant that the doctor's evaluation was limited to the purpose of determining whether claimant suffers from pneumoconiosis or any other occupational lung disease and, therefore, was not intended to be a comprehensive evaluation of his overall health status.

Thus, we find no error in the administrative law judge's decision to accord greater weight to the opinions of Drs. Hippensteel and Castle. Consequently, we affirm the administrative law judge's finding that the medical opinion evidence does not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), we affirm the administrative law judge's denial of benefits. *Trent*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2.

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