BRB No. 06-0915 BLA

S.C.C.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 05/24/2007
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Billy J. Moseley (Webster Law Offices), Pikeville, Kentucky, for claimant.

Sarah M. Hurley (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, 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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (05-BLA-5051) 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 claim filed on August 14, 2003. The administrative law judge found that the evidence 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 that the medical opinion evidence does not establish the existence of pneumoconiosis

pursuant to 20 C.F.R. §718.202(a)(4). The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.[1]

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 contends that the administrative law judge erred in finding that the medical opinion evidence does 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), is sufficient to support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[2] The administrative law judge found that the medical opinions of Drs. Sahyouni, Paranthaman, Jarboe and Hippensteel did not establish the existence of either clinical or legal pneumoconiosis. Decision and Order at 8-10.

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[1] 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).

In a motion filed on October 31, 2006, the Director, Office of Workers' Compensation Programs (the Director), requested that the Board dismiss BethEnergy Mines, Inc. (BethEnergy) as the responsible operator and reform the caption. By Order dated December 19, 2006, the Board granted the Director's motion, dismissed BethEnergy as a party to this case, and reformed the caption. *S.C.C. v. Director, OWCP*, BRB No. 06-0915 BLA (Dec. 19, 2006) (Order) (unpub.).

[2] "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).

Claimant specifically argues that the administrative law judge erred in finding that the opinions of Drs. Sahyouni and Paranthaman did not establish the existence of "legal pneumoconiosis."[3] Claimant initially contends that the administrative law judge erred in finding that Dr. Sahyouni's diagnosis of chronic obstructive pulmonary disease did not constitute a diagnosis of legal pneumoconiosis. Claimant's Brief at 3. We disagree. In a Progress Record dated January 7, 2005, Dr. Sahyouni diagnosed chronic obstructive pulmonary disease. Claimant's Exhibit 1. The administrative law judge, however, properly found that Dr. Sahyouni's diagnosis of chronic obstructive pulmonary disease did not support a finding of legal pneumoconiosis because the doctor did not attribute the condition to claimant's coal mine employment. *See* 20 C.F.R. §718.201(a)(2); Decision and Order at 8-9; Claimant's Exhibit 1.

Claimant also contends that the administrative law judge erred in finding that Dr. Paranthaman's diagnosis of chronic bronchitis did not constitute a diagnosis of legal pneumoconiosis. In a report dated December 11, 2003, Dr. Paranthaman diagnosed "chronic bronchitis by history." Director's Exhibit 11. Dr. Paranthaman opined that the chronic bronchitis "may be related to coal dust exposure for 11 years, if documented." *Id.* The administrative law judge permissibly found that Dr. Paranthaman's statement, that claimant's chronic bronchitis "may" be related to coal dust exposure, was too equivocal to constitute a diagnosis of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); Decision and Order at 9; Director's Exhibit 11. The administrative law judge also permissibly accorded less weight to Dr. Paranthaman's opinion because the doctor did not explain how the objective evidence supported a finding that claimant's chronic bronchitis was attributable to coal dust exposure. *See Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 9; Director's Exhibit 11. The administrative law judge, therefore, properly found that Dr. Paranthaman's diagnosis of chronic bronchitis did not support a finding of legal pneumoconiosis. 20 C.F.R. §718.201(a)(2).

The administrative law judge also properly noted that Drs. Jarboe and Hippensteel each opined that claimant does not suffer from legal pneumoconiosis. Decision and Order at 9; Employer's Exhibits 2, 6-8. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

[3] Because no party challenges the administrative law judge's finding that the medical opinion evidence did not establish the existence of "clinical pneumoconiosis" pursuant to 20 C.F.R. §718.202(a)(4), this finding is affirmed. *Skrack*, 6 BLR at 1-711.

In light of our affirmance of the administrative law judge's findings that the evidence did not 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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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge