BRB No. 07-0670 BLA

L. S. C.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	DATE ISSUED: 05/14/2008
	)	
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 - Denial of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith, Pineville, West Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig L.L.P.), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (2005-BLA-5521) (Decision and Order) of Administrative Law Judge Richard T. Stansell-Gamm, rendered 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 credited claimant with at least twenty years of qualifying coal mine employment, as stipulated by the parties, and adjudicated this claim, filed on January 30, 2004, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge determined that this subsequent claim was subject to the provisions at 20 C.F.R. §725.309(d), and that claimant's previous claim had been finally denied on October 30, 2002 for failure to establish the existence of pneumoconiosis, although total respiratory disability had been established. Following his review of the evidence submitted in support of the instant claim, the administrative law judge determined that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), and thus failed to demonstrate a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge improperly evaluated the medical evidence, and neglected to apply the correct legal standard for establishing the presence of pneumoconiosis under 20 C.F.R. §718.202. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[1]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is 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).

Where a miner files a claim for benefits more than one year after the denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co*., 23 BLR 1-1, 1-3 (2004); *see also Consolidation Coal Co. v. Williams*, 453 F.3d 609, 23 BLR 2-345 (4th Cir. 2006).[2] The applicable conditions of

[1] The administrative law judge's findings that the existence of pneumoconiosis is not established pursuant to 20 C.F.R. §718.202(a)(2) or (a)(3), are not challenged on appeal; accordingly, we affirm these findings. *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711-12 (1983); Decision and Order at 5.

[2] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as claimant was last employed in the coal mine industry in West Virginia. *See* 33 U.S.C. 921(c); *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 6.

entitlement "shall be limited to those conditions upon which the prior claim was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because he failed to establish the existence of pneumoconiosis. Director's Exhibit 1. Consequently, claimant had to submit new evidence establishing this element of entitlement to obtain review of the merits of his claim. 20 C.F.R. §725.309(d)(2), (3).

In determining whether claimant established the existence of pneumoconiosis, the administrative law judge addressed the newly-submitted medical evidence, first evaluating the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1). Of the three x-rays submitted, the later two were interpreted as negative for the presence of pneumoconiosis; the remaining x-ray of April 26, 2004 was read as positive by Dr. Patel, and negative by Dr. Wheeler. As both physicians are dually-qualified radiologists, the administrative law judge reasonably characterized the April 26, 2004 x-ray as inconclusive. Decision and Order at 5-6. Accordingly, his determination that the preponderance of the x-ray evidence failed to establish the presence of pneumoconiosis under Section 718.202(a)(1) is affirmed as supported by substantial evidence. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994); *see also Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Circuit 1992).

Evaluating the medical opinions respecting the existence of pneumoconiosis, under Section 718.202(a)(4), the administrative law judge determined that Dr. Porterfield based his diagnosis of pneumoconiosis on a single positive x-ray reading from 1999, and indicated no awareness of the more recent x-ray and CT scan evidence.[3] The administrative law judge found that Dr. Porterfield's opinion relied on inaccurate and incomplete documentation, and failed to provide sufficient reasoning in support of his medical assessment. Director's Exhibit 3. Finding the weight of the x-ray evidence failed to establish the existence of pneumoconiosis, the administrative law judge determined that Dr. Porterfield's remaining supporting documentation, namely, claimant's home oxygen use, likewise failed to establish the presence of pneumoconiosis. Decision and Order at 13-14.

The administrative law judge also found that Dr. Rasmussen's opinion diagnosing pneumoconiosis was insufficiently reasoned, because he relied on Dr. Patel's positive reading of the April 26, 2004 x-ray, contrary to the administrative law judge's finding that the weight of the x-ray evidence was negative, and because Dr. Rasmussen did not review the later negative x-ray and CT scan evidence. Moreover, the administrative law judge was not persuaded by Dr. Rasmussen's statement that smoking and coal mine dust

[3] Moreover, the administrative law judge properly noted with respect to the 1999 x-ray referenced by Dr. Porterfield that: "the evidence from that period did not support a finding of pneumoconiosis." Decision and Order at 13.

exposure both cause tissue damage in the same manner, as it failed to address evidence indicating that claimant's specific lung damage and emphysema were unrelated to coal dust deposits. Decision and Order at 14.

In contrast, the administrative law judge found the medical opinions of Dr. Zaldivar and Dr. Renn very well documented and reasoned. He noted that Dr. Zaldivar provided a reasoned medical explanation and evaluation of claimant's extensive smoking history to support his opinion that the lung damage was due to smoking rather than dust exposure. Decision and Order at 10-11, 14; Employer's Exhibits 5, 9 at 21-23, 29-34. Similarly, he determined that Dr. Renn provided reasoned medical rationales to explain his conclusion that the objective test results were inconsistent with coal workers' pneumoconiosis. Decision and Order at 12, 14; Employer's Exhibit 10 at 14-17, 19-21, 25-29.

At Section 718.202(a)(4), claimant contests the administrative law judge's evaluation of the medical evidence, asserting that the medical opinions of Dr. Zaldiver and Dr. Renn were improperly based on negative x-rays.[4] Further, he contends that the opinions of Drs. Porterfield and Rasmussen, that claimant suffers from pneumoconiosis, are documented, reasoned and supported by the evidence "available to them." Claimant's Brief at 7.

An administrative law judge, in his role as finder-of-fact, is charged with evaluating the relative value of x-ray diagnoses and assessing the credibility of medical experts. *Mabe v. Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986); *see also Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997). The Board is not authorized to reweigh the evidence on the existence of pneumoconiosis nor substitute its own inferences for those of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). It is therefore the province of the administrative law judge to determine whether an opinion is sufficiently reasoned; an opinion unsupported by sufficient rationale may be disregarded. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998).

We conclude that the opinions of Dr. Porterfield and Rasmussen were validly accorded less credibility due to the reasoning defects noted by the administrative law judge. Decision and Order at 14. A medical opinion that is found to be based on a premise contrary to the administrative law judge's findings, as with Drs. Porterfield's reliance on the single positive x-ray reading from 1999, may be accorded less weight. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *see*

[4] No claim for benefits under the Act may be denied solely on the basis of a negative chest x-ray reading. 20 CFR §718.202(b).

also Kozele v. Rochester & Pittsburgh Coal Co., 6 BLR 1-378 (1983). The administrative law judge's further findings that Dr. Porterfield's opinion was insufficiently documented and relied on incomplete medical data are additional permissible reasons upon which his opinion was discounted. *Id*. Finally, the administrative law judge properly exercised his discretion in assigning less weight to Dr. Rasmussen's finding of pneumoconiosis on the basis that it failed to account for contemporaneous contrary medical evidence. *See Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149 (1989)(*en banc*); Decision and Order at 13-14. Claimant's challenges to the administrative law judge's evaluation of the medical opinions of Dr. Porterfield and Rasmussen are therefore without merit.

Additionally, we reject, as unfounded, claimant's assertion that Dr. Zaldivar and Dr. Renn had "already used negative radiologic evidence to rule out the existence of pneumoconiosis in the first place," and that because they did not diagnose the presence of pneumoconiosis on x-ray, Drs. Zaldivar and Renn necessarily assigned the claimant's pulmonary condition to smoking. Claimant's Brief at 7. Rather, the administrative law judge was persuaded that both physicians provided detailed explanations of the significance of the objective data obtained on pulmonary function studies and CT scans, as well as analysis of how the value data and physical changes were inconsistent with physical indicia correspondent with the presence of pneumoconiosis. His evaluation of the quality of the physicians' supportive reasoning was a proper evaluative basis for crediting the medical opinions. *See Allen v. Mead Corp*., 22 BLR 1-63, 1-67 n.7 (2000); *Church v. Eastern Associated Coal Co*., 20 BLR 1-8, 1-12 (1996); *Ellison v. Ranger Fuel Corp*., 73 F.3d 357, 20 BLR 2-125 (4th Cir. 1995); *Fields v. Island Creek Coal Co*., 10 BLR 1-19, 1-21-22 (1987); Decision and Order at 14.

Characterizing the medical assessments of Dr. Zaldivar and Dr. Renn as "probative and most consistent with all the objective medical evidence," the administrative law judge reasonably concluded that "their consensus represents the preponderance of the probative medical opinions." Decision and Order at 14-15. His consideration of the conflicting medical opinions is detailed, rational and supported by substantial evidence. *See Maypray v. Island Creek Coal Co*., 7 BLR 1-683 (1985). The administrative law judge's determination that the evidence fails to establish the existence of pneumoconiosis under Section 718.202(a)(4) is therefore affirmed.

Finally, we reject as meritless claimant's argument that the administrative law judge's evaluation of the evidence relevant to the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202 failed to accord with the requisite analysis of *Island Creek Coal Co. v. Compton*, 211 F.3d at 209, 22 BLR at 2-170.[5] The evidence of record validly

[5] In *Compton*, the United States Court of Appeals for the Fourth Circuit stressed: "all relevant evidence is to be considered together rather than merely within discrete

found to be most probative was consistent in ruling out the existence of pneumoconiosis. Consequently, the administrative law judge's determination that, considered together, the evidence fails to establish the existence of pneumoconiosis by a preponderance of the evidence, is reasonable and fully comports with *Compton*. The administrative law judge's finding that claimant thereby failed to meet his burden of demonstrating a change in an applicable condition of entitlement in this claim so as to prevail under Section 725.309(d)(3), is affirmed as supported by substantial evidence. We therefore affirm the administrative law judge's concomitant denial of benefits.

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

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

---

subsections of Section 718.202(a)," noting: "weighing all of the relevant evidence together makes common sense." *Island Creek Coal Co v. Compton*, 211 F.3d 203, 209, 22 BLR 2-162, 2-170 (4th Cir. 2000).