BRB No. 97-1127 BLA

BILLY GIBSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BULLION HOLLOW MINING	)	DATE ISSUED:
	)	
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 Edith Barnett, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Michael F. Blair (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (95-BLA-2452) of Administrative Law Judge Edith Barnett (the administrative law judge) 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). Claimant filed his claim for benefits in December 1994. Director's Exhibit 1. The administrative law judge, considering the case pursuant to 20 C.F.R. Part 718, found that claimant engaged in coal mine employment for more than thirty-five years. Decision and Order at 1. The administrative law judge found that the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), and that the presumption that the disease arose from his coal mine employment had not been rebutted under 20 C.F.R. §718.203(b).[1]

[1] We affirm the administrative law judge's decision to credit claimant with more than thirty-five years of coal mine employment and her findings pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203 as they are not contested on appeal. *See Skrack v. Island*

Further, the administrative law judge found that total disability was not established pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals, arguing that the administrative law judge erred in not finding that claimant established total disability due to pneumoconiosis. Employer has submitted a response brief advocating affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has submitted a letter stating that he will not participate in the appeal.

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 the 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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is a contributing cause of the miner's total disability.[2] *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). Failure to prove 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*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we affirm the administrative law judge's finding that the evidence was insufficient to establish total disability pursuant to Section 718.204(c) as supported by substantial evidence. The record contains three pulmonary function studies, all of which produced non-qualifying values, and three blood gas studies, all of which produced qualifying values. 20 C.F.R. §718.204(c)(1), (c)(2); Claimant's Exhibit 1; Director's Exhibits 9, 10, 12, 13, 23; Employer's Exhibit 10, 11, Deposition at 11; Employer's Exhibit 18. In a medical opinion dated July 28, 1995, Dr. Sargent stated that claimant's mild ventilatory impairment should in no way disable claimant to perform his job as a continuous miner operator. Director's Exhibit 23. Dr. Sargent also stated that although claimant's abnormal blood gas studies showed mild

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Creek Coal Co., 6 BLR 1-710 (1983).

[2] The instant case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit inasmuch as claimant's coal mine employment occurred in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

hypoxia, they also indicated 93 percent oxygen saturation. *Id*. In a medical opinion dated December 6, 1995, Dr. Sargent reiterated his conclusion that claimant has sufficient respiratory capacity to resume his coal mine job. Employer's Exhibit 11. In a medical opinion dated November 16, 1995, Dr. Fino stated that claimant was neither partially nor totally disabled from a respiratory standpoint from returning to his last mining job or a job requiring similar effort. Employer's Exhibit 10. Dr. Paranthaman, in a medical report dated January 17, 1995, stated that moderate functional impairment was shown by the mild reduction in FEV1 and the moderate reduction in PO2 at rest. He further stated that since the resting blood gases met the standards for total disability, claimant was considered totally disabled from a respiratory standpoint to do the work of a miner operator. Director's Exhibit 12. In medical opinions dated June 27, 1994 and August 24, 1994, Dr. Renfro indicated that claimant's lungs were performing "fairly well." Employer's Exhibits 5, 6. In a report dated March 22, 1995, Dr. Renfro stated that claimant was unable to return to his work from an orthopedic standpoint and that claimant's "limiting factor is more of an orthopedic problem than a pulmonary one." Employer's Exhibit 18. Finally, Dr. Renfro, in his report dated June 10, 1996, stated that claimant's abnormal blood gas studies supports "his ventilatory impairment." Employer's Exhibit 18.

In weighing the evidence under Section 718.204(c), the administrative law judge noted that the objective clinical evidence was conflicting in that the pulmonary function studies indicated a mild, nondisabling impairment while the qualifying blood gas studies suggested that claimant is totally disabled. The administrative law judge further found that Dr. Renfro's opinion was very unclear regarding claimant's respiratory disability. Decision and Order at 10. The administrative law judge also noted that Dr. Paranthaman summarily concluded that because the resting blood gas studies meet the standard of total disability, claimant was considered totally disabled due to his respiratory problem. *Id.* The administrative law judge further stated that Dr. Paranthaman did not consider specifically the impact of claimant's respiratory impairment on his ability to perform his usual coal mine employment. *Id*. In addition, the administrative law judge found that Dr. Sargent's opinion was clear, well reasoned and documented and that his conclusion regarding the absence of a totally disabling respiratory impairment was more consistent with the clinical evidence and claimant's history of having worked six days per week until his mining accident and with the limited exertional requirements of claimant's last usual coal mine job. Noting that Dr. Fino's opinion supported Dr. Sargent's conclusion, the administrative law judge concluded that the evidence as a whole was insufficient to establish total disability pursuant to Section 718.204(c). *Id*.

Initially, we reject claimant's argument that, because pulmonary function studies and arterial blood gas studies measure two completely different types of respiratory impairment, the administrative law judge erred in finding the objective studies conflicting. Claimant's Brief at 3. In considering whether the evidence is sufficient to establish total disability pursuant to Section 718.204(c), the administrative law judge is required to weigh the evidence supportive of a finding of total disability against the contrary probative evidence. Contrary probative evidence is not limited to medical evidence of the same category or type; rather, the term refers to all evidence which is contrary and probative.

See Shedlock v. Bethlehem Mines Corp., 9 BLR 1-195, 1-198 (1986), *aff'd on reconsideration en banc*, 9 BLR 1-236 (1987).

Next, claimant argues that the administrative law judge erred in crediting the opinions of Drs. Sargent and Fino as consistent with the clinical evidence, inasmuch as the qualifying blood gas studies of record conflict with their opinions. Claimant's Brief at 3-4. Any error committed by the administrative law judge in not addressing the significance of the blood gas studies of record when finding that Dr. Sargent's opinion was more consistent with the clinical evidence is harmless inasmuch as the administrative law judge otherwise properly found that Dr. Sargent's opinion was well reasoned and documented.[3] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983). Furthermore, we reject claimant's suggestion that a medical opinion based upon a nonqualifying pulmonary function study is not sufficient to outweigh qualifying blood gas studies under Section 718.204(c) as a request to reweigh the evidence, which is beyond the scope of the Board's authority. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Next, claimant contends that the administrative law judge erred in discrediting the opinion of Dr. Paranthaman on the grounds that the doctor did not consider the impact of claimant's ability to perform his usual coal mine employment, since Dr. Paranthaman expressed his opinion in terms of total disability. Claimant's Brief at 4-5. However, the administrative law judge rationally found Dr. Paranthaman's opinion to be flawed because the doctor did not provide a sufficient explanation for his summary finding that, because his blood gas studies were qualifying, claimant was totally disabled from a respiratory impairment. *See Clark*, *supra*; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*). Thus, any error committed by the administrative law judge in also discrediting Dr. Paranthaman's opinion because the physician did not specifically consider the impact of claimant's respiratory impairment on his ability to perform his usual coal mine employment is harmless.[4] *See Kozele*, *supra*.

Finally, we reject claimant's contention that the administrative law judge erred in failing to address whether the low oxygen levels in claimant's blood would impact upon his ability to perform the exertional requirements of claimant's usual coal mine employment when weighing the opinions of Drs. Sargent and Fino. The interpretation of medical data is for the physician rather than the administrative law judge and an administrative law judge may not substitute his or her opinion for that of the physician. *See Marcum v. Director,*

[3] With regard to Dr. Fino, the administrative law judge merely noted, properly, that Dr. Fino's reviewing opinion supports Dr. Sargent's conclusion regarding the issue of total disability. Decision and Order at 10; Employer's Exhibit 10.

[4] We affirm the administrative law judge's finding, that Dr. Renfro's opinion on the issue of total disability was unclear, as unchallenged on appeal. *See Skrack*, *supra*; Employer's Exhibit 5.

OWCP, 11 BLR 1-23 (1987). We, therefore, affirm the administrative law judge's finding that claimant failed to establish total disability under Section 718.204(c), a requisite element of entitlement. *See Perry*, *supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge