BRB No. 98-1173 BLA

PERSHING Q. HORTON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GM & W COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
INTERNATIONAL BUSINESS AND MERCANTILE REASSURANCE 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 George P. Morin, Administrative Law Judge, United States Department of Labor.

James Pappas (Abood, Russell, Pappas & Rozich), Johnstown, Pennsylvania, for claimant.

Hilary S. Daninhirsch (Thompson, Calkins & Sutter), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-1352) of Administrative Law Judge George P. Morin 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). In this duplicate claim, the administrative law judge considered only the newly submitted evidence and found that claimant failed to establish the existence of either pneumoconiosis or a totally disabling respiratory impairment. *See* 20 C.F.R. §§718.202(a), 718.204(c). Consequently, the administrative law judge found that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits.

Claimant appeals, asserting that the administrative law judge erred in finding that the medical opinions were insufficient to establish the existence of both pneumoconiosis and a totally disabling pulmonary or respiratory impairment. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, as a party-in-interest, has not participated 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 supported by substantial evidence, is rational, and is in accordance with applicable law. 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).

On appeal, pursuant to Section 718.202(a)(4), claimant contends that the administrative law judge erred in not giving claimant the "benefit of all reasonable inferences." Claimant's Brief at 4 (unpaginated). Claimant further asserts that the administrative law judge's decision was "based upon the superiority in number of doctors, not on the testing presented." *Id*. We reject claimant's contentions.

The administrative law judge found that Drs. Klemens and Levine diagnosed the existence of pneumoconiosis; whereas Drs. Hanzel, Strother and Fino did not, Director's Exhibits 8, 23; Employer's Exhibits 3, 5; Claimant's Exhibits 1, 2. In

[1] We affirm as unchallenged the administrative law judge's length of coal mine employment determination and his findings that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(3) and a totally disabling respiratory impairment pursuant to Section 718.204(c)(1)-(3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

analyzing the medical opinions of record, the administrative law judge did not rely exclusively upon the numerical superiority of the physicians, as claimant has urged. Rather, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Strother because of his superior qualifications as a Board-certified internist and pulmonologist, *see Scott v. Mason Coal Co.*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995), *rev'g on other grounds*, 14 BLR 1-37 (1990)(*en banc*); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985), and found that his opinion was better reasoned and better supported by the objective evidence than the opinions of Drs. Klemens and Levine. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (*en banc*); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983). The administrative law judge also found that Dr. Strother's opinion was further corroborated by the opinions of Drs. Hanzel and Fino. *Id.* Finally, contrary to claimant's assertion, in *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2-A1 (1995), the United States Supreme Court invalidated the true doubt rule, and, in the instant case, the administrative law judge rationally found that claimant failed to establish the existence of pneumoconiosis by the preponderance of the evidence. Consequently, we affirm as rational and supported by substantial evidence the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996); *Hansen v. Director, OWCP*, 984 F.2d 364, 17 BLR 2-48 (10th Cir. 1993); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985).

Pursuant to Section 718.204(c)(4), claimant asserts that the administrative law judge should have relied upon claimant's subjective complaints of total disability and not upon the objective evidence. Claimant again contends that the administrative law judge erred in not giving claimant the benefit of the doubt. Claimant's contentions are not meritorious.

In analyzing the medical opinions pursuant to Section 718.204(c)(4), the administrative law judge rationally accorded greater weight to the opinions of Drs. Hanzel, Strother, and Fino. The administrative law judge found that their opinions were better documented as they were supported by the non-qualifying objective studies and their normal findings on physical examination. *See Clark*, *supra*; *Duke*, *supra*; *Oggero*, *supra*. Additionally, the administrative law judge permissibly credited the opinions of Drs. Strother and Fino because of their superior qualifications. *See Scott*, *supra*; *Onderko*, *supra*; *Wetzel*, *supra*.

Although lay evidence constitutes relevant evidence under Section 718.204(c), the administrative law judge may not rely solely on lay testimony in a living miner's claim to find total disability established under Section 718.204(c). In the instant

case, the administrative law judge permissibly found that the record contains no credible evidence of disability to corroborate claimant's testimony on this issue. *See* 20 C.F.R. §718.204(d)(2); *Salyers v. Director, OWCP*, 12 BLR 1-193 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Matteo v. Director, OWCP*, 8 BLR 1-200 (1985). Consequently, the administrative law judge properly found that claimant failed to establish the existence of a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c). As claimant failed to establish the existence of either pneumoconiosis or total disability, the administrative law judge properly found that claimant failed to establish a material change in conditions. *See* 20 C.F.R. §725.309; *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-76 (3d Cir. 1995). Consequently, we affirm the denial of benefits.

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

REGINA C. McGRANERY
Administrative Appeals Judge