

BRB No. 00-0120 BLA

OPEL CAUSEY)
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED:
)
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order on Remand of Donald W. Mosser,
Administrative Law Judge, United States Department of Labor.

Opel Causey, Winchester, Kentucky, *pro se*.

Jeffrey S. Goldberg (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH,
Administrative Appeals Judge, and NELSON, Acting Administrative
Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand (97-BLA-0057) of Administrative Law Judge Donald W. Mosser 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).¹

¹Claimant initially filed a claim for benefits on March 24, 1971, which was finally denied by the Social Security Administration on April 25, 1974. Director's Exhibit 54. Claimant filed a subsequent claim with the Department of Labor on February 4, 1983, which was denied on June 15, 1983, because claimant failed to establish that he was a coal miner

under the Act, and further failed to establish any element of entitlement. Director's Exhibit 55. No further action was taken until the filing of the instant claim on March 15, 1989. Director's Exhibit 1. Initially, the Department of Labor denied the instant claim, Director's Exhibits 16, 17. Claimant subsequently filed a timely request for modification, Director's Exhibit 18, which was denied by the district director, Director's Exhibits 18, 19, 20, 34. Subsequently, on December 15, 1992, Administrative Law Judge Robert Hillyard issued a Decision and Order denying benefits inasmuch as the evidence of record failed to establish the presence of pneumoconiosis. Director's Exhibit 38. Claimant sought modification of this denial of benefits, a request denied by the District Director and, subsequently, by Administrative Law Judge Hillyard in a Decision and Order issued on April 9, 1997. Subsequent to an appeal by claimant, the Board vacated the denial of benefits and remanded the claim in order for the administrative law judge to hold a formal hearing, to consider the entirety of evidence and to determine whether claimant had established a material change in conditions. *Causey v. Director, OWCP*, BRB No.

The administrative law found the evidence of record sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 inasmuch as the newly submitted evidence of record established the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). Decision and Order on Remand at 9-10. After reviewing the entirety of evidence of record, however, the administrative law judge further concluded that claimant was unable to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Decision and Order on Remand at 8-9, 10-13. Accordingly, benefits were denied. The Director, Office of Workers' Compensation Programs (the Director), responds to claimant's *pro se* appeal and urges affirmance of the administrative law judge's denial of benefits.²

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-361 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

97-1136 BLA (Apr. 3, 1998) and *Causey v. Director, OWCP*, BRB No. 97-1136 BLA (Decision and Order on Reconsideration)(Jul. 28, 1998). On remand, Administrative Law Judge Mosser issued the Decision and Order denying benefits from which claimant now appeals.

²Inasmuch as the administrative law judge's determination that the newly submitted evidence establishes the existence of a totally disabling respiratory impairment pursuant to Section 718.204(c), and thus a material change in conditions pursuant to Section 725.309, is unchallenged on appeal, the finding is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

In finding that the x-ray evidence of record failed to establish the existence of pneumoconiosis, the administrative law judge considered the entirety of x-ray evidence of record, Decision and Order at 9-11, and concluded that the weight of these readings was negative for the existence of pneumoconiosis. Director's Exhibits 13, 14, 23, 29, 32, 33, 42-44, 46-48, 55-57. The administrative law judge, in a permissible exercise of his discretion, accorded greatest weight to the physicians with superior credentials in interpreting x-rays, the majority of whose readings were negative for the existence of pneumoconiosis, see *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); see also *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). Accordingly, we affirm the administrative law judge's determination that the weight of the evidence of record failed to support a finding of pneumoconiosis pursuant to Section 718.202(a)(1). See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).³

In finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge considered the entirety of medical opinion evidence of record and concluded that the weight of such evidence failed to demonstrate the existence of the disease. In so doing, the

³We further affirm the administrative law judge's finding that the existence of pneumoconiosis has been not established pursuant to Section 718.202(a)(2) and (3) inasmuch as there is no autopsy or biopsy evidence of record and there is no evidence of complicated pneumoconiosis in this living miner's claim filed subsequent to January 1, 1982. See 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306.

administrative law judge, in a permissible exercise of his discretion, found that the opinions of Drs. Chaney and Hubbard, Director's Exhibits 23, 42, were entitled to little weight as they did not constitute well-reasoned or well-documented medical opinions because the physicians failed to provide support for their conclusions that claimant suffered from pneumoconiosis. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.* 8 BLR 1-46 (1985). The administrative law judge further found that the opinion of Dr. Jarboe, who diagnosed the existence of pneumoconiosis, Director's Exhibit 11, was entitled to little weight inasmuch as the physician relied on a coal mine employment history of thirty-one years with twenty-six years underground whereas the record only demonstrated a coal mine employment history of eleven years. Decision and Order at 9. An administrative law judge may accord little weight to the opinion of a physician who relies on an inaccurate length of coal mine employment history. See *Creech v. Benefits Review Board*, 841 F.2d 706, 11 BLR 2-86 (6th Cir. 1988); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Long v. Director, OWCP*, 7 BLR 1-254 (1984). Accordingly, we affirm the administrative law judge's decision to accord little weight to the medical opinion of Dr. Jarboe.

Further still, the administrative law judge properly concluded that the medical opinion of Dr. Cooper was not supportive of a finding of coal workers' pneumoconiosis pursuant to Section 718.202(a)(4). Dr. Cooper opined that claimant suffered from a chronic obstructive pulmonary impairment, but did not diagnose the existence of pneumoconiosis or any coal mine dust related disease. Accordingly, the opinion is precluded, as a matter of law, from establishing the existence of pneumoconiosis. See 20 C.F.R. §718.201, 718.202(a)(4); see *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*); see *Stomps v. Director, OWCP*, 816 F.2d 1533, 10 BLR 2-107 (11th Cir. 1987). Accordingly, we affirm the administrative law judge's determination that the medical opinion evidence of record failed to support a finding of pneumoconiosis pursuant to Section 718.202(a)(4).⁴ See *Director, OWCP v. Greenwich Collieries [Ondecko]*,

⁴While the administrative law judge did not specifically address Dr. Baker's conclusion that claimant suffered from coal workers' pneumoconiosis, Director's Exhibit 23, the administrative law judge indicated that he was adopting the findings of Administrative Law Judge Hillyard in the Decision and Order issued December 15, 1992. In that Decision and Order, Judge Hillyard concluded that Dr. Baker's opinion was entitled to little weight inasmuch as it was unreasoned. Judge Hillyard concluded that Dr. Baker relied upon an erroneous length of coal mine employment history and failed to explain his conclusions. See Director's Exhibit 38 at 8. Such determinations provide affirmable bases for rejection of medical opinions. See discussion, *supra*.

512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

Inasmuch as claimant has failed to establish the existence of pneumoconiosis a requisite element of entitlement pursuant to Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry, supra*, we must affirm the administrative law judge's denial of modification and benefits. *See Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); *see also Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993).

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge