

BRB No. 99-1242 BLA

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| BOBBY PUCKETT |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| CLINCHFIELD COAL COMPANY |) | 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 Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Bobby Puckett, Clinchco, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (98-BLA-0112) of Administrative Law Judge Daniel F. Sutton 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). The administrative law

¹The instant claim was filed on April 11, 1997. Director's Exhibit 1.

²Ron Carson, a benefits counselor with Stone Mountain Health Services in St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative

judge initially found that the relevant evidence failed to establish the presence of complicated pneumoconiosis and thus, claimant did not establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis provided at 20 C.F.R. §718.304. The administrative law judge also found that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1) through (a)(4). Accordingly, benefits were denied.

Employer responds to claimant's *pro se* appeal, and requests affirmance of the decision below. The Director, Office of Workers' Compensation Programs, has not filed a brief 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 this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe 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, claimant must establish that he has pneumoconiosis, that the pneumoconiosis arose from his coal mine employment, and that he is totally disabled by the disease. 20 C.F.R. §§718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis provided at Section 718.304, the administrative law judge must consider all the evidence relevant to the presence or absence of complicated pneumoconiosis. 20 C.F.R. §718.304(a)-(c); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993), citing *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991). Under Section 718.304, claimant may establish the existence of complicated pneumoconiosis by showing that the miner is suffering from a dust disease of the lung which: when diagnosed by chest x-ray shows one or more large opacities (greater than one centimeter) classified as Category A, B, or C, 20 C.F.R. §718.304(a); or when diagnosed by biopsy or autopsy, yields massive lesions in the lung, 20 C.F.R. §718.304(b); or when diagnosed by means other than those specified under subsections (a) and (b), would be a condition which could reasonably be expected to yield the results described in subsections (a) or (b) had diagnosis been made as therein described, provided, however, that any diagnosis made under this subsection shall accord with acceptable medical procedures, 20 C.F.R. §718.304(c).

law judge's Decision and Order. In a letter dated September 10, 1999, the Board stated that claimant would be considered to be representing himself on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order.)

The record contains x-rays, CT scans, as well as medical opinions interpreting this evidence regarding the presence or absence of complicated pneumoconiosis. 20 C.F.R. §718.304(a) and (c). The relevant x-ray evidence pursuant to 20 C.F.R. §718.304(a) is as follows: Drs. Gaziano and Paranthaman read the June 19, 1997 x-ray as positive for pneumoconiosis with Category A large opacities. Director's Exhibits 12, 13. Drs. Wheeler and Scott read the June 19, 1997 x-ray as negative for pneumoconiosis 0/1 t/q and 0/1 q/q respectively. Employer's Exhibits 1, 2. Dr. Fino read the June 19, 1997 x-ray as negative for pneumoconiosis and noted granulomatous changes. Employer's Exhibit 24. Dr. Westerfield read the August 27, 1998 and September 4, 1998 x-rays as positive for pneumoconiosis 2/2 q/t with Category A large opacities. Claimant's Exhibit 1. Drs. Fino and Wheeler read the August 27, 1998 x-ray as negative for pneumoconiosis, with Dr. Fino noting granulomatous changes and Dr. Wheeler noting an infiltrate or 2 to 3 centimeters mass. Employer's Exhibits 31, 32.

The record also contains CT scan evidence relevant to the presence or absence of complicated pneumoconiosis. 20 C.F.R. §718.304(c). Dr. Hippensteel conducted a CT scan of claimant on October 15, 1997, finding evidence of a granulomatous disease which he related to histoplasmosis. Employer's Exhibit 13, Employer's Exhibit 26 at 20-22, 30-31. On deposition, Dr. Hippensteel explained that the CT scan provides a more detailed view of the lungs than the chest x-ray and thus better evaluates any opacities. Employer's Exhibit 26 at 16-17. Drs. Wheeler, Fino and Scott reviewed the results of this CT scan. Dr. Wheeler opined that the CT scan showed "Scarring upper lungs due to healed TB / No evidence of silicosis or CWP on these..." Employer's Exhibit 20. Dr. Fino found that the CT scan showed "scattered nodular densities in the upper portion of both lung zones. There is a one centimeter confluence of opacities in the right upper lung zone. There is also calcification seen in this abnormality. All of this is consistent with a granulomatous disease. I am worried regarding a malignancy." Employer's Exhibit 23. Dr. Scott found that the CT scan showed focal fibrosis in both upper lungs. He opined that these changes were compatible with "[tuberculosis], probably healed." Employer's Exhibit 19.

Drs. Paranthaman, Smiddy, Hippensteel and Fino read and/or reviewed relevant clinical evidence and rendered opinions regarding the presence or absence of complicated pneumoconiosis. Their reports are as follows: Dr. Paranthaman performed an examination of claimant, conducting several objective tests, and read the June 19, 1997 x-ray as showing complicated coal workers' pneumoconiosis 1/1 q/p with Category A opacities. Dr. Paranthamn opined that claimant's coal workers' pneumoconiosis was due to his thirty-five years of coal mine employment. Director's Exhibit 10.

Dr. Smiddy conducted an examination of claimant and read certain unidentified x-rays which Dr. Smiddy indicated claimant brought with him to the examination. He stated that these x-rays were consistent with conglomerant pneumoconiosis and

micronodular pneumoconiosis. Dr. Smiddy indicated that his impression at that time was “complicated pneumoconiosis with an element of chronic bronchitis.” Claimant’s Exhibit 1. Dr. Smiddy opined that given that claimant “is a lifetime nonsmoker, I would assume that his component of his bronchitis is related to his exposure to coal dust as well.” *Id.* Dr. Hippensteel performed an examination of claimant and conducted several objective tests. He read the October 15, 1997 x-ray as negative for pneumoconiosis 0/1 s/q. Dr. Hippensteel further conducted a CT scan on October 15, 1997 and read it as showing, “calcifications in parenchymal lesions and hilum with no background opacities suggestive of coal workers’ pneumoconiosis.” Employer’s Exhibit 13. Dr. Hippensteel also reviewed the record as a whole, noting his disagreement with the conclusions of Drs. Paranthaman and Gaziano that claimant has complicated pneumoconiosis. Dr. Hippensteel opined that claimant has evidence of granulomatous disease in his chest which was causing chest x-ray and CT scan abnormalities. *Id.* Dr. Hippensteel was subsequently deposed on March 3, 1998. Employer’s Exhibit 26.

In his July 27, 1998 consulting medical opinion, Dr. Fino reviewed claimant’s medical evidence. He found that the majority of the chest x-ray readings were negative for pneumoconiosis and that his readings of the chest x-rays and CT scan were negative for pneumoconiosis. He further indicated,

I believe that the changes on the x-ray are related to granulomatous disease. I originally was worried that it could be related to malignancy. However, this man had changes on the x-ray for many, many years so malignancy would be excluded as a possibility. The changes clearly are unrelated to the inhalation of coal mine dust....

Dr. Hippensteel felt that this man’s granulomatous disease was related to histoplasmosis, which is a fungal infection endemic in the eastern United States. I would certainly agree with that diagnosis.

Employer’s Exhibit 28.

The administrative law judge’s determination that the relevant evidence does not establish the presence of complicated pneumoconiosis is rational, supported by substantial evidence, and in accordance with law. The administrative law judge found,

After carefully analyzing the medical opinions, x-ray interpretations, and CT scan evaluations, I have concluded that the Claimant has not met his burden of establishing by a preponderance of the evidence that he has complicated pneumoconiosis. Four interpretations of three x-rays contain findings of a large opacity greater than one centimeter in diameter which has been classified as Category A complicated pneumoconiosis. The Employer, however, has offered interpretations of two of these x-rays

from three radiologists who are no less qualified and who found no evidence of complicated pneumoconiosis. [footnote omitted] Furthermore, three of the four positive readings do not unequivocally attribute pneumoconiosis as the cause of the Claimant's opacity. Dr. Gaziano, who read the June 19, 1997 x-ray as "1/2," states that the upper lobe densities could be a "possible granulomatous disease such as TB." [Director's Exhibit 12]. Dr. Westerfield similarly noted that the large opacities he observed in both the August 27, 1998 and September 4, 1998 x-rays could possibly be the result of tuberculosis disease. [Claimant's Exhibit 1]. The opinions of Drs. Gaziano and Westerfield that tuberculosis may play a part in the Claimant's condition is entirely consistent with the opinions expressed by Drs. Wheeler and Scott following their review of the Claimant's CT scan, a more sophisticated and reliable means for diagnosing diseases of the lungs.

The medical report by Dr. Smiddy also does not prove that the Claimant suffers from complicated pneumoconiosis. His opinion is not well reasoned in that he relies almost entirely on unidentified x-ray interpretations which, for the reasons stated above, do not establish the presence of complicated pneumoconiosis, and on the results of an arterial blood gas study which yielded a PO₂ of 71 that is not contained in the record.

Dr. Paranthaman's medical report similarly fails to establish the existence of complicated pneumoconiosis. The single positive x-ray interpretation upon which he relies is contradicted by the overwhelming majority of the x-ray evidence. Furthermore, Dr. Paranthaman's opinion was rendered before Claimant underwent a CT scan that was interpreted as negative for pneumoconiosis by numerous well-qualified physicians. Thus, Dr. Paranthaman's opinion is not based on the most accurate and reliable diagnostic test results contained in the record.

Decision and Order at 6-7. The administrative law judge thereby found, within his discretion, that the x-ray evidence supportive of the presence of complicated pneumoconiosis was outweighed by the contrary readings of record rendered by similarly qualified physicians. 20 C.F.R. §718.304(a); *Fuller v. Gibraltar Coal Co.*, 6 BLR 1-1291 (1984); *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Further, the administrative law judge correctly noted that each physician who reviewed the CT scan found that it did not constitute evidence of the presence of complicated pneumoconiosis. 20 C.F.R. §718.304(c); *Melnick, supra*.

The administrative law judge additionally provided valid reasons why he accorded less weight to the diagnoses of complicated pneumoconiosis rendered by Drs. Smiddy and Paranthaman. Specifically, the record supports the administrative law judge's indication

that Dr. Smiddy's "opinion is not well reasoned in that he relies almost entirely on unidentified x-ray interpretations..." Decision and Order at 7. *Clark, supra*; Claimant's Exhibit 1. The administrative law judge also properly found that Dr. Paranthaman's opinion similarly failed to establish the presence of complicated pneumoconiosis inasmuch as, *inter alia*, the physician did not have the benefit of claimant's October 15, 1997 CT scan which the administrative law judge characterized as "the most accurate and reliable diagnostic test results contained in the record," Decision and Order at 7, and which was taken subsequent to Dr. Paranthaman's examination of claimant on June 16, 1997. *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); Director's Exhibit 10; Employer's Exhibit 13.

Inasmuch as the administrative law judge's finding that claimant failed to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis at Section 718.304 is supported by substantial evidence and is in accordance with law, it is affirmed. *See Lester, supra; Melnick, supra*.

The administrative law judge also found that the evidence is insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) through (a)(4). The administrative law judge properly found that the quantity and quality of the x-ray evidence of record is overwhelmingly negative for pneumoconiosis. 20 C.F.R. §718.202(a)(1); *Melnick, supra*. Further, there is no biopsy or autopsy evidence, 20 C.F.R. §718.202(a)(2), and claimant cannot establish the existence of pneumoconiosis by virtue of one of the presumptions referred to in 20 C.F.R. §718.202(a)(3) in light of our affirmance of the administrative law judge's finding at Section 718.304 and given the fact that the instant living miner's claim was filed after January 1, 1982.

Considering the relevant medical opinions at Section 718.202(a)(4), the administrative law judge, within his discretion, indicated that he was most persuaded by the opinions of Drs. Hippensteel and Fino that claimant does not have pneumoconiosis, and accorded them great weight. *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985); Employer's Exhibits 13, 28. Specifically, the administrative law judge found that the opinions of Drs. Hippensteel and Fino were detailed, comprehensive and consider claimant's full medical history. *Clark, supra; see also Hall, supra*. He also noted, "More importantly, they are consistent in that they each independently reach the same conclusion that the Claimant's chest abnormalities are related not to pneumoconiosis but rather to a granulomatous disease." Decision and Order at 9.

Based on the foregoing discussion, we affirm the administrative law judge's findings at Section 718.202(a)(1) through (a)(4), as well as his determination that the evidence of record fails to establish the existence of pneumoconiosis at Section 718.202(a). *Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000). In light of our affirmance of the administrative law judge's finding that claimant failed to

establish the existence of pneumoconiosis under Part 718, an essential element of entitlement, we further affirm the administrative law judge's denial of benefits in the instant case as a finding of entitlement is precluded. *Trent; supra; Perry, supra; see also 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).

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge