BRB No. 05-0494 BLA

DAVID S. SNYDER, SR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EIDEMILLER ENTERPRISES, INCORPORATED	)	
	)	
and	)	
	)	
HARTFORD ACCIDENT AND INDEMNITY COMPANY	)	DATE ISSUED: 11/03/2005
	)	
Employer/Carrier-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

David S. Snyder, Sr., United, Pennsylvania, *pro se*.

Gregory J. Fischer and Sean B. Epstein (Pietragallo, Bosick & Gordon), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-5165) of Administrative Law Judge Daniel L. Leland 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). The administrative law judge found, and the parties stipulated to, twenty years of coal mine employment. Decision and Order at 2; Hearing Transcript at 15. After determining that the instant claim is a subsequent claim, the administrative law judge noted the proper standard and found that the newly submitted evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and thus established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.[1] Decision and Order at 2, 5-7; Director's Exhibit 1. Considering the record *de novo*, the administrative law judge concluded that the evidence of record was sufficient to establish that claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b) but insufficient to establish that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b). Decision and Order at 7-9. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds asserting that substantial evidence supports the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.[2]

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). If the findings of fact and conclusions of law of the administrative law judge 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

---

[1] Claimant filed his initial claim for benefits with the Department of Labor on October 30, 1986, which was finally denied by the district director on January 30, 1987 as claimant failed to establish any element of entitlement. Director's Exhibit 1. Claimant took no further action until he filed the instant claim on January 14, 2002, which was denied by the district director on July 17, 2003. Director's Exhibits 2, 25. Claimant subsequently requested a hearing before the Office of Administrative Law Judges. Director's Exhibit 26.

[2] As the administrative law judge's length of coal mine employment determination as well as his findings pursuant to 20 C.F.R. §§725.309, 718.202(a) and 718.203(b) are not adverse to claimant and unchallenged on appeal, they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *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 conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.[3] Initially, we conclude that the administrative law judge, within his discretion as fact-finder, permissibly accorded greater weight to the evidence submitted in the miner's subsequent claim since the prior evidence is eighteen years old and is not as probative of claimant's current condition. Decision and Order at 7-8; Director's Exhibit 1; *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 11 BLR 2-147 (6th Cir. 1988); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985).

With respect to the merits, the administrative law judge rationally found that the evidence of record was insufficient to establish the existence of a totally disabling respiratory or pulmonary impairment.[4] *See Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). The administrative law judge permissibly found that the evidence of record was insufficient to establish the existence of total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(ii) as all of the pulmonary function studies and blood gas studies are non-qualifying.[5] *Winchester v. Director, OWCP*, 9 BLR 1-177 (1986); Decision and

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as the miner was last employed in the coal mine industry in Pennsylvania. *See* Director's Exhibits 1, 4, 5; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

[4] Claimant can not establish the existence of total disability based upon the irrebuttable presumption contained in 20 C.F.R. §718.304 as the record is devoid of any evidence of complicated pneumoconiosis.

[5] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2) (i), (ii).

Order at 8; Director's Exhibits 14, 15, 19; Employer's Exhibit 1. The administrative law judge further properly found that there is no evidence of cor pulmonale with right-sided congestive heart failure in the record pursuant to Section 718.204(b)(2)(iii). *See* 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 8; *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989).

Pursuant to Section 718.204(b)(2)(iv), the administrative law judge acted within his discretion in determining that the two opinions in which the physicians indicated that claimant could not perform his last coal mine job were insufficient to establish total respiratory or pulmonary disability. The administrative law judge's finding that Dr. Wodzinski's opinion does not satisfy claimant's burden under Section 718.204(b)(2)(iv) is rational and supported by substantial evidence, as Dr. Wodzinski did not diagnose a totally disabling respiratory or pulmonary impairment.[6] Decision and Order at 8; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986).

The administrative law judge also rationally found that the opinion of claimant's treating physician, Dr. Kucera, was entitled to little probative weight because the physician did not adequately explain how the objective evidence supports his diagnosis of a totally disabling impairment.[7] Decision and Order at 9; Claimant's Exhibit 1; *see Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark*, 12 BLR 1-149; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Although Dr. Kucera was claimant's treating physician, the administrative law judge was not required to accord determinative weight to his opinion regarding total disability solely based upon this factor. *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-114 (3d Cir. 1997); *Tedesco v. Director*, OWCP, 18 BLR 1-103 (1994); *Clark*, 12 BLR 1-149; *see also Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989). The administrative law judge fully considered Dr.

---

[6] Dr. Wodzinski stated that claimant is not capable of performing his last coal mine job and identified coronary artery disease as the major factor responsible for claimant's inability to perform his usual coal mine employment with mild obstructive lung disease being a minor contributing factor. Director's Exhibit 13.

[7] Dr. Kucera stated that claimant would be unable to perform his last coal mine job due to chronic obstructive lung disease and pneumoconiosis. He acknowledged that claimant's objective studies were normal but indicated that claimant has suffered lung damage which is not manifested in pulmonary function or blood gas studies. Dr. Kucera also indicated that claimant's healthy lung tissue compensates for the damaged portion of the lower lobe of his left lung. Claimant's Exhibit 1 at 20-26.

Kucera's opinion and provided a rational reason for finding it insufficient to satisfy claimant's burden of proof. Decision and Order at 9; *see Balsavage v. Director, OWCP*, 295 F.3d 390, 22 BLR 2-386 (3d Cir. 2002); *Mancia*, 130 F.3d 579; *Lango*, 104 F.3d 573; *Tedesco*, 18 BLR 1-103; *Trumbo*, 17 BLR 1-85; *Clark*, 12 BLR 1-149; *Hutchens*, 8 BLR 1-16. We affirm, therefore, the administrative law judge's determination that the medical opinion evidence does not support a finding of total disability pursuant to Section 718.204(b)(2)(iv).

Because we have affirmed the administrative law judge's determination that claimant has not proven that he is totally disabled under Section 718.204(b)(2), an essential element of entitlement, we must also affirm the denial of benefits. *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge