BRB No. 05-0724 BLA

G. T. COOTS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED: 11/30/2005
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (04-BLA-5135) of Administrative Law Judge Rudolf L. Jansen on a claim[1] 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 initially credited claimant with twenty-three years of qualifying coal mine employment. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that the Director, Office of Workers' Compensation Programs, (the Director) conceded the existence of pneumoconiosis arising out of coal mine employment, but the administrative law judge determined that claimant

[1] Claimant, G. T. Coots, filed an application for benefits on October 3, 2001. Director's Exhibit 2.

failed to establish total respiratory disability pursuant to 718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find that the opinion of Dr. Baker established total respiratory disability under Section 718.204(b)(2)(iv). Claimant additionally contends that because the administrative law judge found the opinion of Dr. Hussain, a physician who examined him at the behest of the Department of Labor, entitled to no weight, the Director failed to provide claimant with a complete and credible pulmonary examination as required by Section 413(b) of the Act, 30 U.S.C. §923(b), sufficient to substantiate his claim. The Director responds, urging affirmance of the denial.[2]

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 the applicable law, they are binding upon this 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends that the administrative law judge erred in finding the opinion of Dr. Hussain, a physician who conducted claimant's pulmonary evaluation at the behest of the Department of Labor, entitled to no weight for the reason that Dr. Hussain failed to address the exertional requirements of claimant's usual coal mine work despite finding a mild pulmonary impairment. Claimant argues, therefore, that the Director failed to provide him with a complete, credible pulmonary examination sufficient to substantiate his claim. In response, the Director asserts that he is only required to provide claimant with a complete and credible examination, not a dispositive one. The Director avers further that while the administrative law judge found Dr. Hussain's opinion worthy of less weight, he did not find it devoid of any weight. Consequently, the Director asserts that he did not abdicate his statutory obligation to provide claimant with a complete, credible pulmonary evaluation.

The statute requires the Department of Labor (DOL) to provide a living miner with a complete pulmonary examination sufficient to constitute an opportunity to substantiate the

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[2] We affirm the administrative law judge's determinations regarding length of coal mine employment, the existence of pneumoconiosis arising out of coal mine employment, total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), and his weighing of Dr. Ranavaya's opinion inasmuch as these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 3, 8-9.

claim. The Director's contention that the opinion of Dr. Hussain was complete and credible, notwithstanding the administrative law judge's finding that it was less persuasive, has merit. *See* 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.405(b); *Pettry v. Director, OWCP*, 14 BLR 1-98 (1990); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990) (*en banc*). In assessing the credibility of the medical opinion evidence pursuant to Section 718.204(b)(2)(iv), the administrative law judge found that although Dr. Hussain opined, based on a complete pulmonary examination, that claimant was not totally disabled and retained the respiratory capacity to perform his usual coal mine work, Dr. Hussain's opinion was entitled to "less probative weight" because Dr. Hussain failed to discuss the exertional requirements of claimant's usual coal mine employment.[3] Decision and Order at 10. Thus, contrary to claimant's argument, the administrative law judge did not find that Dr. Hussain's opinion was entitled to no weight. Further, the administrative law judge's determination that Dr. Hussain's opinion was entitled to less probative weight is not tantamount to a finding that Dr. Hussain's opinion was entitled to no weight, and thus, lacking credibility altogether. Hence, inasmuch as Dr. Hussain clearly rendered an opinion addressing all issues of entitlement, but the administrative law judge found it entitled to "less probative weight" because Dr. Hussain did not address the exertional requirements of claimant's usual coal mine employment, we reject claimant's argument that the Director failed to provide claimant with a complete, credible pulmonary examination. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1992), *alj decision summarily aff'd*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992) (court retained jurisdiction.); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

Citing *Meadows v. Westmoreland Coal Co.*, 6 BLR 1-773 (1984), claimant argues that a single medical opinion may be sufficient to invoke the presumption of total disability. Claimant's reliance on *Meadows* is misplaced, however, because that case dealt with the application of the interim presumption of total disability due to pneumoconiosis set forth at 20 C.F.R. Part 727. The instant case arises under 20 C.F.R. Part 718 which requires that claimant affirmatively establish each element of entitlement. 20 C.F.R. §§718.2, 718.202, 718.203, 718.204; *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*); *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 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.

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[3] Although Dr. Hussain diagnosed a mild impairment, he also opined that claimant was not totally disabled and retained the respiratory capacity to perform his usual coal mine work. Director's Exhibit 12; *see Lane v. Union Carbide Corp.*, 105 F.3d 166, 172, 21 BLR 2-34, 2-45-46 (4th Cir. 1997); *Boyd v. Freeman United Coal Mining Co.*, 6 BLR 1-159 (1983).

1993).

Claimant also argues that the administrative law judge erred in rejecting the well-reasoned and documented opinion of Dr. Baker, his treating physician, which establishes that claimant is totally disabled. Citing the *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, Dr. Baker opined that claimant has a Class I impairment on the basis of the values yielded on claimant's pulmonary function studies. Additionally, Dr. Baker found a second impairment based on the presence of advanced pneumoconiosis and, again citing *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, stated, "although a pneumoconiosis may cause no physiological impairment, its presence usually requires the patient's removal from the exposure to the dust causing the condition. With this patient's advanced pneumoconiosis, this would imply the patient is 100% occupationally disabled for any type of work in a dusty environment, especially the coal mining industry." Claimant's Exhibit 3.

Contrary to claimant's contention, the administrative law judge permissibly found that Dr. Baker's assessment, that claimant's advanced pneumoconiosis resulting in a pulmonary impairment "would imply" that claimant was "100% occupationally disabled from returning to coal mine employment," was insufficient to establish total respiratory disability as it was merely a recommendation that claimant not return to a dusty environment to preclude further exacerbation of his pneumoconiosis. Decision and Order at 10; Claimant's Exhibit 3. Inasmuch as a medical opinion of the inadvisability of returning to coal mine employment because of pneumoconiosis is insufficient to demonstrate total respiratory disability, we affirm the administrative law judge's rejection of Dr. Baker's opinion for this reason. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988); *Bentley v. Director, OWCP*, 7 BLR 1-612, 614 (1984); *New v. Director, OWCP*, 6 BLR 1-597 (1983).

Claimant also contends that the administrative law judge erred in failing to consider the exertional requirements of his usual coal mine work as a brattice man and tipple operator in conjunction with the medical opinion of Dr. Baker. As the Director, contends, however, Dr. Baker's diagnosis of a Class I impairment is not sufficient to establish total disability as Dr. Baker did not explain what this meant.[4] The administrative law judge found that Dr. Baker's opinion was not well-reasoned because the documentation underlying his opinion did not support his diagnosis. *See Migliorini v. Director, OWCP*, 898 F.2d 1292, 1296-1297, 13 BLR 2-418, 2-425 (7th Cir. 1990), *cert. denied*, 498 U.S. 958 (1990); *Director, OWCP v.*

[4] The *AMA Guides to the Evaluation of Permanent Impairment*, Fourth Edition, categorize a Class I impairment as an impairment of 0% of the whole person. *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, AMA Press 2001, p. 107.

Rowe, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983) (determination as to whether physician's report is sufficiently reasoned and documented is credibility matter for administrative law judge); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order at 10. Accordingly, we affirm the administrative law judge's determination that the opinion of Dr. Baker failed to establish total disability pursuant to Section 718.204(b)(2)(iv).

Claimant additionally asserts that the administrative law judge may not reject a medical opinion solely because it is based on non-conforming or non-qualifying pulmonary function studies. The administrative law judge, however, did not reject Dr. Baker's opinion because it was based on a non-qualifying pulmonary function study. Rather, as noted above, he rejected it because it was not well-reasoned and because it constituted a recommendation against further coal dust exposure, not a finding of total disability.[5] Accordingly, we reject claimant's contention.

In conclusion, the administrative law judge found that the pulmonary function studies and arterial blood gas studies were non-qualifying, that there was no evidence of cor pulmonale with right-sided congestive heart failure, and that the medical opinion evidence was insufficient to demonstrate total respiratory disability. Decision and Order at 9-11. Accordingly, after weighing all the evidence relevant to Section 718.204(b)(2)(i)-(iv), the administrative law judge permissibly found that the evidence of record failed to affirmatively establish total respiratory disability. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (*en banc*). Because claimant has not otherwise challenged the administrative law judge's credibility determinations, we affirm the administrative law judge's determination that claimant failed to satisfy his burden of demonstrating total respiratory disability pursuant to Section 718.204(b)(2)(iv). *See Fields*, 10 BLR at 1-19; *Gee*, 9 BLR at 1-4.

Based on the foregoing, we affirm the administrative law judge's determination that claimant failed to affirmatively establish total respiratory disability pursuant to Section 718.204(b) as this finding is rational, contains no reversible error, and is supported by substantial evidence. Inasmuch as claimant has failed to satisfy his burden to establish total

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[5] In finding that the November 14, 2001 pulmonary function study accompanying Dr. Baker's examination failed to demonstrate total disability pursuant to Section 718.204(b)(2)(i), the administrative law judge found this study less reliable because it was non-conforming as it was not accompanied by the requisite three tracings. This was rational. *See* 20 C.F.R. §§718.103(b); 718.204(b)(2)(i); Decision and Order at 9 n.4.

respiratory disability, a requisite element of entitlement under Part 718, we affirm the administrative law judge's denial of benefits.

Accordingly, the Decision and Order – Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge