BRB No. 06-0208 BLA

DELPHIA E. PRATT o/b/o and Widow of PEARL PRATT	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED: 11/29/2006
DIAMOND MAY COAL COMPANY	)	
and	)	
KENTUCKY COAL PRODUCERS' SELF-INSURANCE FUND	)	
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 – Denying Benefits on Miner's Claim and on Widow's Claim of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

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

Denise M. Davidson (Barret, Haynes, May, Carter & Davidson, P.S.C.), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order – Denying Benefits on Miner's Claim and on Widow's Claim (04-BLA-0117) of Administrative Law Judge Rudolf L. Jansen. The claims were 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). This case is before the Board for the second time. In the original decision, Administrative Law Judge Daniel J. Roketenetz determined that the instant claim constituted a request for modification pursuant to 20 C.F.R. §725.310 (2000) of the denial of benefits in both the miner's duplicate claim filed on November 9, 1992, and the survivor's claim filed on November 4, 1994.[2] Judge Roketenetz found that no evidence was submitted by claimant in her request for modification on either claims. He further found that claimant alleged no change in conditions or mistake in a prior determination of fact. Judge Roketenetz thus concluded that there was no need for a hearing in the instant case, and that because

[1] Claimant, Delphia Pratt, is the surviving spouse of the miner, Pearl Pratt, who died on October 30, 1994. Director's Exhibit 14. Claimant filed her survivor's claim on November 4, 1994. Director's Exhibit 2.

[2] The miner filed his initial claim for benefits on July 24, 1980. Director's Exhibit 114. Subsequently, the claim was denied by the district director because claimant failed to show that his pneumoconiosis arose out of coal mine employment or that he was totally disabled. Director's Exhibit 114. The miner filed a second claim on November 9, 1992. Director's Exhibit 1. After the claim was denied by the district director, the miner sought modification. While the miner's request for modification was pending, the miner died. Director's Exhibit 14. Claimant then filed a survivor's claim on November 4, 1994, Director's Exhibit 2, which was subsequently consolidated with the miner's duplicate claim. Both the survivor's claim and miner's request for modification were eventually denied by the district director. Director's Exhibit 111. After a hearing, Administrative Law Judge Thomas F. Phalen, Jr. denied benefits in both claims in a Decision and Order issued on March 17, 1998. Director's Exhibit 118. Claimant appealed and the Board affirmed the denial of survivor's benefits, but remanded the case for further consideration of the miner's claim. *Pratt v. Diamond May Coal Co.*, BRB Nos. 98-0986 BLA and 98-0986 BLA-A (Aug. 18, 1999)(unpub.). On remand, Judge Phalen found that claimant failed to establish entitlement to miner's benefits. Director's Exhibit 134. Subsequently, claimant filed a letter requesting modification of the decisions denying benefits in both claims. Director's Exhibit 135. The request was denied by the district director. Director's Exhibit 141. Claimant requested a hearing, which was set before Judge Roketenetz for April 11, 2001. On January 10, 2001, employer filed a Motion to Dismiss, because no new evidence was submitted with claimant's request for modification. Subsequently, on March 14, 2002, Judge Roketenetz issued a Decision and Order Dismissing Claim and Order Canceling Hearing.

there were no issues presented before him, claimant's request for modification should be dismissed.

Pursuant to claimant's appeal, the Board vacated Judge Roketenetz's Decision and Order canceling the hearing and dismissing both the miner's claim and the survivor's claim and remanded the case for further proceedings. *Pratt v. Diamond May Coal Co.*, BRB No. 02-0559 BLA (Mar. 24, 2003)(unpub.). Specifically, the Board held that in this case arising within jurisdiction of the United States Court of Appeals for the Sixth Circuit,[3] claimant need not submit new evidence in support of a request for modification nor allege a specific error in order for an administrative law judge to consider modification. Rather, claimant need allege only that the ultimate fact was in error. *Pratt*, slip op. at 3-4. In addition, the Board held that once a hearing was requested, claimant was entitled to a hearing on the claim. *Id*. Consequently, the Board remanded the case to the administrative law judge for further consideration.

Following a formal hearing on remand, Administrative Law Judge Thomas Phalen, Jr. remanded the case to the district director for development of claimant's newly submitted medical evidence. Director's Exhibit 146. After reviewing the medical evidence, the district director denied claimant's request for modification. *Id*. The claim was then transferred to the Office of Administrative Law Judges and assigned to Administrative Law Judge Rudolf L. Jansen (the administrative law judge) for a formal hearing.

In the current Decision and Order, the administrative law judge again determined that the instant claim was a request for modification of the denial of the miner's duplicate claim and the denial of the survivor's claim. Accepting the parties' stipulation, the administrative law judge credited the miner with nineteen years of coal mine employment and adjudicated both the miner's claim and the survivor's claim pursuant to 20 C.F.R. Part 718. With regard to the miner's claim, the administrative law judge found that the evidence submitted since the prior denial failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) and also failed to establish a totally disabling respiratory impairment pursuant to Section 718.204(b)(2). Consequently, the administrative law judge found the newly submitted evidence insufficient to establish a change in one of the applicable conditions of entitlement previously adjudicated against the miner. Decision and Order at 25. In addition, the administrative law judge considered the previously submitted medical evidence of record and found that it failed to

[3] The record indicates that claimant's last coal mine employment occurred in Kentucky. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. Decision and Order at 18; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

establish either the existence of pneumoconiosis or a totally disabling respiratory impairment. Consequently, the administrative law judge found that claimant failed to establish a mistake in a determination of fact in the miner's claim.

With regard to the survivor's claim, the administrative law judge stated that a finding of the existence of pneumoconiosis is a requisite element of entitlement in a survivor's claim. And, because he found that the newly submitted evidence, in conjunction with the previously submitted evidence, failed to establish the existence of pneumoconiosis in the miner's claim and, thus, that claimant failed to establish a mistake in a determination of fact pursuant to Section 725.310, the survivor's claim likewise could not succeed. Decision and Order at 31. Accordingly, the administrative law judge found that the evidence failed to support modification in both the miner's claim and the survivor's claim, and he denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the x-ray evidence and medical opinion evidence when he found that claimant did not establish the existence of pneumoconiosis. Claimant argues further that the administrative law judge erred in his consideration of the medical opinion evidence when he found that claimant did not establish that the miner was totally disabled. Additionally, claimant contends that the administrative law judge erred in failing to render a specific finding regarding whether the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not respond on the merits of this appeal.[4]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. 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; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR

[4] We affirm the administrative law judge's decision to credit the miner with nineteen years of coal mine employment, as well as his findings pursuant to 20 C.F.R. §§718.202(a)(2), (3), 718.204(b)(2)(i), (ii) and (iii), as unchallenged by the parties on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 718.202(a)(1), claimant contends that the administrative law judge erred in his weighing of the x-ray evidence. Claimant states that the record contains numerous interpretations of several films, of which three were positive for the existence of pneumoconiosis. She argues that the administrative law judge improperly relied on the readers' credentials, that he merely counted the negative readings, and "may have 'selectively analyzed'" the readings. Claimant's Brief at 3-4. Claimant's allegations of error are without merit.

The administrative law judge determined that all of the relevant x-ray interpretations submitted since the prior denial were negative for the existence of pneumoconiosis and, therefore, did not establish a change in conditions.[5] Decision and Order at 21; Director's Exhibit 146. Moreover, with regard to his determination that the x-ray evidence as a whole failed to establish a mistake in a determination of fact, the administrative law judge found that the record contains thirty-nine interpretations of fifteen x-ray films, of which thirty-three were read as negative for the existence of pneumoconiosis. Decision and Order at 5-7, 26. Relying on the physicians' relative qualifications, the administrative law judge accorded greater weight to the preponderance of the readings which were negative interpretations by physicians with superior qualifications. Decision and Order at 26; Director's Exhibits 19, 20, 83, 48, 90, 97, 99,-107, 109, 114, 146. Consequently, contrary to claimant's contention, the administrative law judge conducted a proper qualitative analysis of the conflicting x-ray readings. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). We affirm, therefore, the administrative law judge's determination that the x-ray evidence of record is insufficient to establish either a change in the miner's condition or a mistake in a determination of fact pursuant to Section 725.310 (2000).

Pursuant to Section 718.202(a)(4), claimant argues that the administrative law judge erred in rejecting the opinion of Dr. Chaney, that the miner had pneumoconiosis

[5] The administrative law judge found that the x-ray evidence submitted by claimant in support of her request for modification consisted of x-ray evidence already contained in the record and, therefore, was not relevant to determining whether claimant established a change in conditions in the miner's claim. Decision and Order at 21; Director's Exhibit 146. Likewise, the administrative law judge found that a majority of the x-ray interpretations submitted by employer on modification were the resubmissions of previously admitted evidence and therefore unable to establish a change in conditions in the miner's claim. *Id*.

and that it hastened the miner's death, and that the administrative law judge failed to consider Dr. Chaney's status as the miner's treating physician. Claimant's Brief at 4-7. Claimant's contentions lack merit. The administrative law judge acknowledged that Dr. Chaney had treated claimant from 1988 until 1994, but rationally assigned his opinion less weight because Dr. Chaney failed to properly document his diagnosis and also failed to adequately explain the basis for his opinion diagnosing pneumoconiosis. Decision and Order at 22; Claimant's Exhibit 1; *Peabody Coal Co. v. Groves*, 227 F.3d 829, 22 BLR 2-320 (6th Cir. 2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc).*

Moreover, contrary to claimant's contention, the administrative law judge was not required to accord enhanced weight to the opinion of Dr. Chaney based on his status as treating physician, as the administrative law judge properly found that the doctor's opinion was poorly documented and unreasoned. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-648-49 (6th Cir. 2003); *Griffith v. Director,* OWCP, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Clark*, 12 BLR at 1-155. Consequently, we affirm the administrative law judge's determination that the opinion of Dr. Chaney was outweighed by Dr. Jarboe's well-reasoned and documented report, and that therefore, claimant did not establish a change in conditions pursuant to Section 725.310 (2000). Decision and Order at 23; Director's Exhibit 146; *see Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993).

In addition, we reject claimant's contention that the administrative law judge erred in not crediting the 1980 medical opinion of Dr. Williams, in which the physician diagnosed the existence of pneumoconiosis, arguing that this opinion is well reasoned. Claimant's Brief at 4-5. The administrative law judge permissibly found that Dr. Williams's diagnosis of pneumoconiosis, based on an x-ray interpretation and the miner's coal mine employment, without further explanation, was not well-reasoned and documented. Decision and Order at 27; Director's Exhibit 114; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Riley v. National Mines Corp.*, 852 F.2d 197, 11 BLR 2-182 (6th Cir. 1988). We therefore affirm the finding that the prior decision does not contain a mistake in a determination of fact on the issue of pneumoconiosis pursuant to Section 725.310 (2000).

Regarding the administrative law judge's findings under Section 718.204(b)(2)(iv), claimant initially asserts that in addressing the issue of total disability, the administrative law judge is required to consider the exertional requirements of claimant's usual coal mine work in conjunction with a physician's finding regarding the extent of any respiratory impairment. Claimant's Brief at 7, citing *Cornett*, 227 F.3d 569, 22 BLR 2-107; *Hvidzak v. North American Coal Corp.*, 7 BLR 1-469 (1984); *Parsons v. Black Diamond Coal Co.*, 7 BLR 1-236 (1984). The only specific argument claimant sets forth, however, is that:

> The claimant's usual coal mine work included being a head drive operator and a car driver. It can be reasonably concluded that such duties involved the claimant being exposed to heavy concentrations of dust on a daily basis. Taking into consideration the claimant's condition against such duties, it is rational to conclude that the claimant's condition prevents him from engaging in his usual employment in that such employment occurred in a dusty environment and involved exposure to dust on a daily basis.

Claimant's Brief at 8. Claimant's argument is without merit. A physician's statement that a miner should limit further exposure to coal dust is not equivalent to a finding of total disability. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988). Therefore, we affirm the finding that the evidence fails to establish a change in conditions or a mistake in a determination of fact on the issue of total disability pursuant to Section 725.310 (2000). *See Trent*, 11 BLR 1-26*; Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Perry*, 9 BLR 1-1; *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

Because claimant has not raised any meritorious allegations of error, we affirm the administrative law judge's findings under Sections 718.202(a) and 718.204(b)(2), and his determination that claimant has not demonstrated a change in conditions in the miner's claim under Section 725.310 (2000). We also affirm the administrative law judge's determination that the prior denial contains no mistake in a determination of fact pursuant to Section 725.310 (2000). Decision and Order at 26-30. We therefore affirm the denial of benefits in the miner's claim. 20 C.F.R. §725.310 (2000); *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994).

With respect to the survivor's claim, claimant contends that the administrative law judge erred in failing to render a finding regarding the issue of whether the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205.[6] We disagree. Herein, as

[6] To establish entitlement to survivor's benefits, claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). In survivor's claims filed on or after January 1, 1982, the miner's death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, if it was a substantially contributing cause or factor leading to the miner's death, if death was caused by complications of pneumoconiosis, or if the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304 is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

the administrative law judge permissibly found that the newly submitted evidence, considered in conjunction with the previously submitted evidence, fails to establish the existence of pneumoconiosis in the miner's claim, *see* discussion, *infra*, and, thus, that the record does not support a finding that there was a mistake in a determination of fact pursuant to Section 725.310 (2000) in the miner's claim, he properly found that claimant's survivor's claim also cannot succeed. Decision and Order at 31; *see Griffith v. Director,* OWCP, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). As claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement in her survivor's claim, we must affirm the denial of benefits. *See* 20 C.F.R. §718.205(a).

Accordingly, the administrative law judge's Decision and Order – Denying Benefits on Miner's Claim and on Widow's Claim is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge