BRB No. 02-0170 BLA

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

Appeal of the Decision and Order Upon Remand of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilberton, Pennsylvania, for claimant.

Michelle S. Gerdano (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Upon Remand (99-BLA-0589) of Administrative Law Judge Ralph A. Romano 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] The case is before the

[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and they are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted,

Board for the second time. The administrative law judge found that the evidence was insufficient to establish total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. '718.204(b), (c).[2] Accordingly, the administrative law judge denied the claim.

The relevant procedural history of this case is as follows: Claimant filed his claim for benefits with the Department of Labor (DOL) on September 3, 1998. Director=s Exhibit 1. DOL informally denied the claim on January 5, 1999. Director=s Exhibit 13. Following a hearing, Administrative Law Judge Ralph A. Romano (the administrative law judge) issued a Decision and Order dated March 10, 2000, wherein he denied benefits. Claimant appealed to the Board. The Board affirmed the administrative law judge=s findings that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. '' 718.202(a) and 718.203, and that the pulmonary function studies and blood gas studies failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(i) and (b)(2)(ii), respectively, but vacated the administrative law judge=s denial of benefits and remanded the case to the administrative law judge for him to reconsider the medical opinion evidence at Section 718.204(b)(2)(iv), and to compare the assessments made by the doctors in the opinions of record with the exertional requirements of claimant=s usual coal mine employment. *Reigle v. Director, OWCP,* BRB No. 00-0718 BLA (Mar. 27, 2000)(unpub.). On remand, the administrative law judge denied benefits in a Decision and Order dated October 10, 2001, wherein he found that the medical opinion evidence was insufficient to establish total respiratory disability due to pneumoconiosis at Section 718.204(b), (c). Claimant then filed the instant appeal with the Board.

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refer to the amended regulations.

[2]The provision pertaining to total disability, previously set out at 20 C.F.R. '718.204(c) is now found at 20 C.F.R. '718.204(b), while the provision pertaining to total disability causation, previously set out at 20 C.F.R. '718.204(b), is now found at 20 C.F.R. '718.204(c).

On appeal, claimant challenges the administrative law judge=s finding that the medical opinions fail to establish total respiratory disability at Section 718.204(b). Claimant asserts that the administrative law judge failed to adequately explain his decision to discount the opinions of Drs. Romanic and Kraynak. Claimant also asserts that the administrative law judge mischaracterized the evidence, speculated and substituted his own judgment for that of the physicians. The Director, Office of Workers= Compensation Programs (the Director), responds, urging affirmance of the denial of benefits. Claimant replies, disagreeing with the Director, and generally reiterating his earlier contentions.[3]

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[3]We previously affirmed the administrative law judge=s finding that the blood gas studies of record fail to establish total respiratory disability at Section 718.204(b)(2)(ii). *Reigle v. Director, OWCP,* BRB No. 00-0718 BLA (Mar. 27, 2000)(unpub.). at 2, n.2. We now affirm, as unchallenged on appeal, the administrative law judge's finding that the record contains no evidence of cor pulmonale and thus, fails to establish total respiratory disability pursuant to Section 718.204(b)(2)(iii). *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Moreover, claimant states that he wishes to preserve for purposes of appeal the contention that the administrative law judge erred in his consideration of the pulmonary function study evidence at Section 718.204(b)(2)(i). Claimant=s Brief at 5. We previously affirmed the administrative law judge=s finding that this evidence does not establish total respiratory disability at Section 718.204(b)(2)(i). As no exception to the law of the case doctrine is contended by claimant, nor is one apparent, this finding now constitutes the law of the case and will not be disturbed. *See Brinkley v. Peabody Coal Co*., 14 BLR 1-147

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 into the Act by 30 U.S.C. '932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The record contains three medical opinions relevant to the issue of total disability due to pneumoconiosis at Section 718.204. Drs. Romanic and Kraynak opined that claimant was totally disabled due to pneumoconiosis, while Dr. Green opined that claimant suffered from cardiac disease due to cigarette smoking, but could resume his last coal mine employment with no impairment. Director=s Exhibits 7, 8; Claimant=s Exhibits 1, 2. With respect to the administrative law judge=s consideration of Dr. Romanic=s opinion that claimant could not perform his usual coal mine employment due to anthracosilicosis, claimant asserts that the administrative law judge contradicted himself, and states that at one point the administrative law judge found it was not possible to determine how long Dr. Romanic treated claimant, but later stated that the doctor treated him since 1996. To the contrary, the administrative law judge found Dr. Romanic's opinion to be conclusory, and did not reflect the depth that is expected of a physician who cared for claimant for three years. The administrative law judge therefore, permissibly found that Dr. Romanic's opinion was not entitled to additional weight solely based on the fact that Dr. Romanic was claimant's treating physician, *see Onderko v. Director, OWCP,* 14 BLR 1-2 (1989); *Wetzel v. Director, OWCP,* 8 BLR 1-139 (1985). The administrative law judge also rejected Dr. Romanic=s opinion on the basis that he failed to fully explain his conclusion that claimant was totally disabled due to pneumoconiosis. Decision and Order at 4-5. Inasmuch as Dr. Romanic provided no basis for his conclusion, we affirm the administrative law judge=s decision to accord little weight to Dr. Romanic=s opinion as within his discretion as trier of fact. *Clark v. Karst-Robbins Coal Co.,* 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.,* 12 BLR 1-11 (1988); *Lucostic v. U.S. Steel Corp*., 8 BLR 1-46 (1985). We affirm, therefore, the administrative law judge=s finding that Dr. Romanic=s opinion is insufficient to carry claimant=s burden at Section 718.204.

(1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

With respect to Dr. Kraynak=s opinion, claimant asserts that the administrative law judge=s determination to give his opinion less weight is irrational. Dr. Kraynak opined that claimant is totally and permanently disabled due to coal workers= pneumoconiosis. Claimant=s Exhibit 2. The administrative law judge permissibly rejected Dr. Kraynak=s opinion because he neglected to explain what effect smoking or claimant=s heart problems had on claimant=s disability and because the opinion was conclusory. *See Clark, supra; Tackett, supra; Lucostic, supra.*[4] We affirm, therefore, the administrative law judge=s finding that Dr. Kraynak=s opinion is insufficient to carry claimant=s burden at Section 718.204.

Claimant also asserts that the administrative law judge failed on remand to adhere to the Board=s instruction to determine whether Dr. Green, who opined that claimant suffered from cardiac disease due to cigarette smoking but could resume his last coal mine employment with no impairment, was aware of the exertional requirements of claimant=s usual coal mine employment. Claimant asserts that the administrative law judge mischaracterized Dr. Green's opinion and substituted his own judgment for that of the physician. We decline, however, to address this argument. Since the administrative law judge has provided a legitimate, alternative ground for rejecting the only evidence which, if credited, could support claimant's burden, claimant's contention regarding the contrary opinion of Dr. Green is moot. *See Cochran v. Director, OWCP,* 16 BLR 1-101(1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

In light of the foregoing, we affirm the administrative law judge's finding that claimant has failed to established total disability due to pneumoconiosis at 20 C.F.R. §718.204. Inasmuch as the administrative law judge=s finding that the evidence fails

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[4]Dr. Kraynak also premised his opinion, in part, upon a smoking history of one to one and a half packs a day for a period of fifteen years. Although not cited by the administrative law judge, claimant testified at the hearing that he smoked about one and a half packs a day for thirty years. H. Tr. at 29-30. Thus, the administrative law judge permissibly gave less weight to Dr. Kraynak=s opinion on the basis that he utilized an inaccurate smoking history. *See Bobick v. Saginaw Mining Co.,* 13 BLR 1-52 (1988); *Piniansky v. Director, OWCP*, 7 BLR 1-171 (1984).

to establish total respiratory disability due to pneumoconiosis at Section 718.204 precludes entitlement pursuant to the Part 718 regulations, we affirm the administrative law judge's denial of benefits. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge