BRB No. 02-0341 BLA

PHYLLIS BELCHER (Widow of HAROLD D. BELCHER)	)	
Claimant-Petitioner	)	
v.	)	
WESTMORELAND 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 of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Phyllis Belcher, Wise, Virginia, *pro se*.

Natalie D. Brown (Jackson & Kelly PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant,[1] without the assistance of counsel, appeals the Decision and Order (99-BLA-1025) of Administrative Law Judge Edward Terhune Miller denying benefits on a duplicate 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).[2] The administrative

[1]Claimant is pursuing the miner's claim filed by her deceased husband, Harold D. Belcher.

[2]The Department of Labor has amended the regulations implementing the Federal

law judge credited the miner with seventeen years, eleven months and twenty-three days of coal mine employment and adjudicated this duplicate claim[3] pursuant to the regulations contained in 20 C.F.R. Part 718. Employer conceded that the miner suffered from a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). Hearing Transcript at 20. However, the administrative law judge found the newly submitted evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the newly submitted evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Consequently, the administrative law judge concluded that the miner failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000).[4] Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *See McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v.*

Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3]The miner filed his initial claim on December 12, 1996. Director's Exhibit 37. This claim was denied by the Department of Labor on March 7, 1997. *Id*. Because the miner did not pursue this claim any further, the denial became final. The miner filed his most recent claim on July 20, 1998. Director's Exhibit 1.

[4]The revisions to the regulations at 20 C.F.R. §725.309 apply only to claims filed after January 19, 2001.

Director, OWCP, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 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).

After considering the newly submitted evidence, the administrative law judge found that the miner failed to establish a material change in conditions at 20 C.F.R. §725.309 (2000). The administrative law judge stated that "[t]he previous denial of the instant claim, [sic] was based on the finding that [the miner] did not establish the existence of pneumoconiosis or total disability due to pneumoconiosis." Decision and Order at 8; *see* Director's Exhibit 37. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, adopted a standard whereby an administrative law judge must consider all of the new evidence, favorable and unfavorable to claimant, and determine whether the miner has proven at least one of the elements of entitlement previously adjudicated against him and whether claimant has thereby established a material change in conditions at 20 C.F.R. §725.309(d) (2000). *See Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

In finding the newly submitted evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), the administrative law judge considered the newly submitted x-ray evidence. Of the twenty-five newly submitted x-ray interpretations of record, twenty-two readings are negative for pneumoconiosis, Director's Exhibits 17, 19, 28, 30, 32; Employer's Exhibits 1, 3, 5, 10, 12, 14, 19-22; Claimant's Exhibit 1, one reading is positive, Director's Exhibit 18, and two x-rays are unreadable, Employer's Exhibits 19, 20. The administrative law judge properly accorded greater weight to the negative x-ray readings which were provided by physicians who are dually qualified as B readers and Board-certified radiologists.[5] *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem*

[5]The record consists of twenty-five interpretations of seven newly submitted x-rays. The newly submitted x-rays dated June 16, 1998, May 11, 1999, June 24, 1999, June 25, 1999, June 27, 1999 and October 12, 1999 were read by various physicians as negative for pneumoconiosis, while the newly submitted x-ray dated August 13, 1998 was read by various physicians as negative and positive for pneumoconiosis. The administrative law judge stated that "the majority of physicians interpreting [the August 13, 1998] x-ray, including those with qualifications superior to those of the physician reading it as positive, read it as negative." Decision and Order at 9. Dr. Ranavaya, a B reader, read the August 13, 1998 x-ray as positive for pneumoconiosis. Director's Exhibit 18. However, Drs. Dahhan, Myer and Paranthaman, B readers, and Drs. Navani, Kim, Scott, Spitz, Wheeler and Wiot, B readers and Board-certified radiologists, read the same x-ray as negative for pneumoconiosis.

Mines Corp., 8 BLR 1-211 (1985). Moreover, since twenty-two of the twenty-five x-ray interpretations of record are negative for pneumoconiosis, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994); *see also Director, OWCP v. Greenwich Collieries* [*Ondecko*], 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

Next, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) since there is no biopsy or autopsy evidence demonstrating the existence of pneumoconiosis. In addition, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3) since none of the presumptions set forth therein is applicable to the instant claim. *See* 20 C.F.R. §§718.304, 718.305, 718.306. The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Similarly, the miner is not entitled to the presumption at 20 C.F.R. §718.305 because the miner filed his claim after January 1, 1982. *See* 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, this claim is not a survivor's claim; therefore, the presumption at 20 C.F.R. §718.306 is also inapplicable.

Director's Exhibits 17, 19, 30, 32; Employer's Exhibits 19, 20-22.

Further, the administrative law judge properly found the newly submitted evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Whereas Dr. Smiddy opined that the miner suffered from pneumoconiosis, Director's Exhibit 31, Drs. Castle, Dahhan, Fino, Hippensteel, Jarboe, Morgan and Spagnolo opined that the miner did not suffer from pneumoconiosis, Employer's Exhibits 1, 7, 8, 16, 17, 22-26, 28-30, 32, 33. Dr. Paranthaman opined that the miner's pulmonary emphysema was probably related to cigarette smoking, but it could have been aggravated by the miner's exposure to coal dust. Director's Exhibits 12, 14. In the history of present illness section of a hospital report, Dr. Prince noted underlying chronic obstructive pulmonary disease and pneumoconiosis.[6] Claimant's Exhibit 1. The administrative law judge properly accorded greater weight to the opinions of Drs. Castle, Dahhan, Fino, Hippensteel, Jarboe and Spagnolo than to the contrary opinions of Drs. Paranthaman, Prince and Smiddy because he found that their opinions are better reasoned.[7] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR

[6]The administrative law judge noted that "[o]f record are office notes dating from February, 1999, to November 1999, from Dr. Prince, who is [B]oard-certified in internal medicine, and reports related to hospitalizations in June, 1999, and October, 1999." Decision and Order at 6 (footnote omitted). The administrative law judge stated that "[t]he reports reflect examinations and treatment for chronic obstructive pulmonary disease, bronchitis, cardiac disease requiring pacemaker, atrial fibrillation, depression, abdominal pain and diarrhea." *Id*. The administrative law judge stated that "[n]one of these reports discuss [sic] the etiology of [the miner's] chronic obstructive pulmonary disease or mention any disease related to coal dust exposure, except for a single notation in the October 12, 1999 medical history related to hospitalization indicating that [the miner had] 'underlying chronic obstructive pulmonary disease and pneumoconiosis.'" *Id*.

[7]The administrative law judge found that "the opinions [of] Drs. Dahhan, Fino, Castle, Spagnolo, Jarboe and Hippensteel, finding that [the miner] did not have pneumoconiosis, were generally well-reasoned and supported by substantial medical evidence." Decision and Order at 10. The administrative law judge stated that "[t]hese physicians reviewed numerous medical reports and explained in detail how the objective evidence supported their conclusions." *Id*. In contrast, the administrative law judge found that "[Dr. Smiddy's] opinion is not reasoned and is entitled to little, if any, probative value." *Id*. at 9. The administrative law judge stated that "[Dr. Smiddy] offered no explanation for his conclusion nor indicated what evidence, if any, he relied upon." *Id*. The administrative law judge also stated that "Dr. Paranthaman did not offer a sufficient explanation as to how the physical findings supported his conclusions." *Id*. Lastly, the administrative law judge stated that "Dr. Prince's notes and report are not entitled to controlling weight because they do not provide a reasoned opinion based on the objective evidence that [the miner] suffer[ed] from pneumoconiosis." *Id*. at 10.

1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). In addition, the administrative law judge permissibly discredited Dr. Paranthaman's opinion because it is equivocal.[8] *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). Since it is supported by substantial evidence, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Since the administrative law judge properly found that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4), we hold that substantial evidence supports the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a). *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

With regard to 20 C.F.R. §718.204(c), the administrative law judge found the newly submitted evidence insufficient to establish total disability due to pneumoconiosis. The administrative law judge reasonably determined that it is illogical to find that the miner has established total disability due to pneumoconiosis in a case where the miner has failed to establish the existence of pneumoconiosis. *See* 20 C.F.R. §§718.202(a) and 718.204(c). As previously noted, the prior claim was denied because the miner failed to establish the existence of pneumoconiosis based upon the previously submitted evidence. Director's Exhibit 37. Further, substantial evidence supports the administrative law judge's finding that

[8]The administrative law judge noted that "[i]n one report, Dr. Paranthaman stated that [the miner's] emphysema was 'probably' related to smoking, but 'could have' been aggravated by exposure to coal dust, sand dust and diesel smoke." Decision and Order at 9. The administrative law judge also noted that "[i]n a later report, Dr. Paranthaman stated that it was 'unlikely' that [the miner's] emphysema was primarily caused by coal dust exposure but was 'probably' caused by smoking." *Id*. The administrative law judge further noted that "[e]lsewhere in that same report, he stated that [the miner's] emphysema 'could have' been significantly aggravated by his coal dust exposure." *Id.*

the miner failed to establish the existence of pneumoconiosis based upon the newly submitted evidence in the duplicate claim. 20 C.F.R. §718.202(a). Thus, because it is supported by substantial evidence, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c).

Since the miner failed to establish the existence of pneumoconiosis and total disability due to pneumoconiosis based upon the newly submitted evidence, we hold that the administrative law judge properly concluded that the miner failed to establish a material change in conditions at 20 C.F.R. §725.309 (2000). *See Rutter*, *supra*.

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

REGINA C. McGRANERY
Administrative Appeals Judge