BRB No. 03-0119 BLA

JOSEPH TRYBUS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BETHENEGY MINES, INCORPORATED	)	DATE ISSUED: 10/10/2003
	)	
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 - Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Blair Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose), Johnstown, Pennsylvania, for employer.

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

PER CURIAM

Claimant appeals the Decision and Order - Denying Benefits (02-BLA-0264) of Administrative Law Judge Daniel L. Leland 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 administrative law judge determined that this claim constituted a

[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 are found at 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

request for modification of the denial of a duplicate claim[2] and concluded, based on the recent medical evidence submitted, that claimant established total disability, the element of entitlement previously adjudicated against him. Considering all the evidence of record, however, the administrative law judge concluded that it failed to establish that claimant=s pneumoconiosis was a substantially contributing cause of his total disability. Benefits were, accordingly, denied.

On appeal, claimant contends that the administrative law judge erred in finding that the medical opinion evidence failed to establish disability causation. Employer responds, urging affirmance of administrative law judge=s denial of benefits.[3] The Director, Office of Workers= Compensation Programs (the Director), has declined to participate in this appeal.[4]

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[2] Claimant was born in 1922. He worked in coal mining for thirty-one years, stopping in 1979, because of a back injury sustained during a mining accident. Director=s Exhibits 106-148 at 19. Claimant filed his first claim for benefits on November 20, 1980, which was denied by Administrative Law Judge Sidney Harris on October 12, 1984. Director=s Exhibit 105. The Board affirmed that denial in *Trybus v. Bethlehem Mines Corp.*, BRB No. 84-2397 BLA (Jan. 30, 1987)(unpub.). Claimant filed a second claim on February 29, 1988, which was denied by Administrative Law Judge George P. Morin on December 2, 1994 because claimant failed to establish a totally disabling respiratory impairment. Director=s Exhibit 106. No further action was taken until claimant filed the instant claim on January 16, 1996. Director=s Exhibit 1. On July 23, 1997, Administrative Law Judge Michael P. Lesniak denied benefits. Director=s Exhibit 81. Pursuant to a request for modification by claimant and a hearing, Judge Lesniak awarded benefits on June 7, 1999. Director=s Exhibit 127. Subsequent to an appeal by employer, the Board vacated the award of benefits. *Trybus v. Bethlehem Mines Corp.*, BRB No. 00-0565 BLA (Apr. 6, 2001)(unpub). On August 8, 2001, Judge Lesniak issued a Decision and Order denying benefits. Claimant requested modification. After a hearing on modification, Administrative Law Judge Daniel L. Leland issued the Decision and Order denying benefits which is now before us on appeal.

[3] Employer=s motion to withdraw its cross-appeal, 03-0119 BLA-A, was granted by the Board on January 28, 2003.

[4] We affirm the administrative law judge=s finding of total disability and Amaterial change@ as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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).

In order to establish entitlement to benefits in a living miner=s claim pursuant to 20 C.F.R. Part 718, claimant must prove 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. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*).

Claimant first argues that the administrative law judge erred in rejecting the opinions of Drs. Karduck, Schaaf, and Gress as not well-reasoned because they Aasserted that [c]laimant=s pulmonary impairment [was] due to pneumoconiosis without offering a rationale as to how they were able to reach that conclusion.@ Decision and Order at 7. Specifically, claimant contends that Dr. Karduck=s opinion was reasoned as it was based on his many years of treating claimant, claimant=s forty years of underground coal mine employment, claimant=s pulmonary function test results, and other information. Claimant also argues that the report of Dr. Schaaf was also reasoned as it contained detailed findings concerning the results of claimant=s pulmonary evaluation and a full review of the other relevant medical evidence reports, including laboratory test results, x-ray findings, and recorded symptoms. Likewise, claimant argues Dr. Gress=s opinion was reasoned as it was based on three examinations of claimant over ten years, a review of the reports of several other physicians, x-ray findings, smoking history, and claimant=s age.[5]

In discussing the medical opinions relevant to disability causation, the administrative law judge found that the opinions of Drs. Karduck, Schaaf, and Gress were not well-reasoned as they merely asserted that claimant=s pulmonary impairment was due to pneumoconiosis without offering a rationale for that conclusion. Further, the administrative law judge noted that, while Dr. Karduck stated that he had treated the claimant for Amany years,@ he declined to accord the opinion controlling weight as he found that it was not well-

[5] Because claimant has not made any arguments concerning any of the other medical opinions of record, we decline to address them. We thus have no substantial issue to review on the matter. *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

reasoned. Instead, the administrative law judge found the opinions of Drs. Pickerell, Castle and Fino to be better reasoned and credited them on the issue of disability causation because: they considered a variety of possible causes for claimant=s pulmonary impairment; Dr. Pickerell pointed out that claimant=s x-ray findings had not progressed in many years; claimant=s coal mine employment ended in 1979; Dr. Fino noted a lack of progression in the findings on x-rays, along with the absence of reduced lung volumes, and reduced diffusing capacity on clinical tests; and Dr. Castle provided a lengthy report in which he reviewed in detail all the medical evidence in this case and found that claimant=s total disability was not due to pneumoconiosis. Additionally, the administrative law judge accorded greater weight to the opinions of Drs. Pickerell, Castle and Fino because they were board-certified in pulmonary diseases. Although the administrative law judge acknowledged that Dr. Schaaf was also board-certified in pulmonary diseases, he noted that Drs. Karduck and Gress were not. Accordingly, the administrative law judge concluded that the evidence failed to establish that pneumoconiosis was a substantially contributing cause of claimant=s total disability.

The administrative law judge may accord less weight to medical opinions which are not fully explained, *see Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Cooper v. United States Steel Corp.*, 7 BLR 1-842 (1985); *York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985), and more weight to medical opinions which are best supported by underlying documentation, *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp*. 8 BLR 1-46 (1985). The administrative law judge may also accord greater weight to the opinions of physicians with superior qualifications, *Martinez v. Clayton Coal Co.*, 10 BLR 1-24, 1-26 (1987); *Wetzel*, 8 BLR at 1-141; and is not required to accord greater weight to the opinion of a treating physician if he finds it unreasoned, 20 C.F.R. '718.104(d)(5); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997).[6]

[6] Section 718.104(d)(5) provides in pertinent part: Athe weight given to the opinion of a miner=s treating physician shall also be based on the credibility of the physician=s opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.@ 20 C.F.R. '718.104(d)(5).

In this case, claimant=s arguments are tantamount to a request that we reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988); *see Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211, 22 BLR 2-469, 2-481 (3d Cir. 2002)(AWhere the administrative law judge has discussed the qualifications of the competing physicians and the quality of their respective reasoning, and substantial evidence supports the administrative law judge=s findings, which are in accordance with law, the Board will not be held to have erred in affirming his decision.@); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997)(A[A]s trier of fact, the administrative law judge is not bound to accept the opinion or theory of any medical expert.@).

Claimant contends the administrative law judge erred in not finding that the opinions of Drs. Karduck, Schaaf, and Gress established total disability due to pneumoconiosis. Dr. Karduck stated in a one page report that he observed that claimant had progressive, subjective dypnea over the many years he had treated claimant and a progressive decrease and loss of diffusion capacity in the lung as shown by a pulmonary function study. Dr. Schaaf, in addition to examining claimant himself and conducting his own tests, reviewed other medical data and opined that claimant was disabled due to pneumoconiosis based on the progressive deterioration in function over time, demonstrated by laboratory tests, the progressive deterioration in x-ray findings and the deterioration in claimant=s symptomatic capacity. Dr. Gress found that claimant was disabled due to pneumoconiosis based on his examination and testing of claimant and his review of other medical evidence. Claimant=s argument is rejected.

The administrative law judge is not precluded from according greater weight to opinions which he finds to be better reasoned. *See Clark*, 12 BLR 1-149, 1-155; *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986); *Wetzel*, 8 BLR 1-139; *Peskie*, 8 BLR 1-126; *Lucostic*, 8 BLR 1-46; *Brown v. Director, OWCP*, 7 BLR 1-730, 1-732 (1985); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-175 (4th Cir. 2000)(AThe administrative law judge must examine the reasoning employed in a medical opinion in light of the objective material supporting that opinion, and also must take into account any contrary test results or diagnosis.@). Thus, the administrative law judge acted within his discretion when he accorded greater weight to the opinions of Drs. Pickerill and Fino, which the administrative law judge found were based on examinations and extensive review of claimant=s medical record, and the opinion of Dr. Castle, which was based on a complete review of the claimant=s entire medical file, because he found that they had a more

complete picture of the miner=s heath and their opinions were better supported by underlying documentation than were the opinions of Drs. Karduck, Schaaf, and Gress. *See Clark*, 12 BLR at 1-155; *Stark*, 9 BLR at 1-37; *Brown*, 7 BLR 1-732. The administrative law judge also permissibly accorded greater weight to the opinions of Drs. Pickerill, Castle, and Fino than to the opinions of Drs. Karduck and Gress based on their superior credentials. *Martinez*, 10 BLR at 1-26; *Wetzel*, 8 BLR at 1-141; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *see also Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983).

We further reject claimant=s assertion that a finding of disability causation must necessarily follow a finding that claimant suffered from pneumoconiosis arising from coal mine employment and a totally disabling respiratory impairment. Disability causation, as defined at 20 C.F.R. '718.204(c), is a distinct element of entitlement, and requires claimant to establish this element of entitlement separately. 20 C.F.R. '718.204(c); *see Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989); *see generally Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. Likewise, we reject claimant=s argument that the administrative law judge=s Decision and Order does not comply with the requirements of the Administrative Procedure Act (the APA), 5 U.S.C. '557(c)(3)(A), as incorporated into the Act by 5 U.S.C. '554(c)(2), 33 U.S.C. '919(d) and 30 U.S.C. '932(a). We therefore affirm the administrative law judge=s finding that claimant has failed to establish that he was totally disabled due to pneumoconiosis, a necessary element of entitlement. 20 C.F.R. '718.204(c); *Bonessa*, 884 F.2d 726, 13 BLR 2-23; *see Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

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