BRB No. 03-0486 BLA

CONLEY LEE DANIELS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, INCORPORATED	)	DATE ISSUED: 10/24/2003_____
	)	
and	)	
	)	
TRANSCO ENERGY COMPANY	)	
	)	
Employers/Carrier-Respondents	)	
	)	
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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

Lois A. Kitts (Baird & Baird, PSC), Pikeville, Kentucky, for employer, Glenn=s Trucking Company, Incorporated.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (02-BLA-0306) of Administrative Law Judge Joseph E. Kane rendered on a request for modification of a previous denial, 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 credited claimant with nineteen years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.[2] The administrative law judge found that the evidence established the existence of pneumoconiosis under 20 C.F.R. '718.202(a), and thus a change in conditions pursuant to 20 C.F.R. '725.310 (2000), but failed to establish the existence of a totally disabling respiratory impairment under 20 C.F.R. '718.204(b)(2). Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in finding that the medical opinion evidence was not sufficient to establish a totally disabling respiratory impairment pursuant to Section 718.204(b)(2)(iv). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers= Compensation Programs, is not participating in this appeal.[3]

The Board=s scope of review is defined by statute. If the administrative law judge=s findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law, they are binding upon this Board and may not be disturbed. 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

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[1]The initial claim, filed on April 15, 1993, was denied by Administrative Law Judge Rudolph L. Jansen, who found the evidence insufficient to establish the existence of pneumoconiosis and total disability. Director=s Exhibits 1, 29. On July 28, 1995, the Board affirmed the denial. *Daniels v. Leeco, Inc.*, BRB No. 95-1220 BLA (July 28, 1995) (unpublished). Subsequently, claimant filed a timely request for modification that was denied by Judge Jansen on May 20, 1998. Director=s Exhibit 62. The Board affirmed the denial. *Daniels v. Leeco, Inc.*, BRB No. 98-1170 BLA (June 1, 1999) (unpublished). On December 9, 1999 and May 15, 2001, claimant=s timely requests for modification of the previous denial were denied by the district director and the administrative law judge. Director=s Exhibits 69, 75, 89, 91-92, 105.

[2]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, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3]The administrative law judge=s findings regarding the length of claimant=s coal mine employment and pursuant to 20 C.F.R. ''718.202(a) and 725.310, are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

disabling. 20 C.F.R. ''718.3, 718.202, 718.203, 718.204. Failure to establish anyone of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant contends that the administrative law judge erred in finding that the opinions of Drs. Mettu, Wells, Clarke, Sundaram, Chaney, and Baker, that claimant is totally disabled, were insufficient to satisfy claimant=s burden of proof under Section 718.204(b)(2)(iv). Claimant specifically argues that the administrative law judge erred in rejecting the opinion of Dr. Wells because it was based on Anoncomforming@ or Anonqualifying@ pulmonary function studies. Claimant also argues that the opinion of Dr. Chaney should have been entitled to greater weight because of his status as claimant=s treating physician.

Contrary to claimant=s contention, the administrative law judge rationally found Dr. Wells= opinion Aless probative@ because he relied on a pulmonary function study that did not conform to the applicable quality standards, and he failed to provide any other basis for his diagnosis of total disability. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); Decision and Order at 31. Although the administrative law judge did not specifically acknowledge Dr. Chaney as claimant=s treating physician, he accurately reviewed all the progress notes and medical opinions authored by Dr. Chaney. The administrative law judge reasonably accorded no weight to Dr. Chaney=s report of the January 24, 1996 CT scan and his progress notes because these documents, standing alone, do not address the extent to which claimant is disabled nor do they contain information from which the administrative law judge could infer that claimant is totally disabled. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Clay v. Director, OWCP*, 7 BLR 1-82 (1984); Decision and Order at 32. The administrative law judge also acted properly in giving no weight to the June 16, 1999 note in which Dr. Chaney stated that it Awould be best for [claimant] to abstain from any dust exposure@ as the statement is not tantamount to an opinion that claimant is totally disabled. *Zimmerman*, 871 F.2d 564, 12 BLR 2-254 ; *Clark*, 12 BLR 1-149*; Justice Island Creek Coal Co.*, 11 BLR 1-91 (1988); Decision and Order at 33; Director=s Exhibit 69.

In addition to the progress notes, the administrative law judge reviewed Dr. Chaney=s short letter opinions dated May 23, 1997, February 20, 2000 and June 28, 2000. Decision and Order at 33; Director=s Exhibits 58, 77. The administrative law judge reasonably gave Alittle weight@ to Dr. Chaney=s May 23, 1997 opinion that claimant is totally disabled because he provided neither documentation nor a rationale for his opinion, Dr. Chaney merely concluded that claimant was disabled. *Clark*, 12 BLR 1-149; Decision and Order at 33; Director=s Exhibit 58. Further, the administrative law judge rationally gave no weight to Dr. Chaney=s February 20, 2000 and June 28, 2000 opinions because he failed to address claimant=s level of impairment and the administrative law judge could not infer from Dr.

Chaney=s opinion that claimant is totally disabled. *Zimmerman*, 871 F.2d 564, 12 BLR 2-254; *Clay*, 7 BLR 1-82; Decision and Order at 33; Director=s Exhibit 77.

Moreover, the administrative law judge reasonably found that Dr. Clarke=s opinion was entitled to less weight because the doctor Aappears to automatically assume total [disability] immediately upon the presence of pneumoconiosis.@ Decision and Order at 31; Director=s Exhibit 25. Dr. Clarke opined that claimant was Atotally and permanently disabled for all work in a dusty environment and all manual labor due to I.L.O.-80 2/1 p, coal workers pneumoconiosis.@ *Id.* Similarly, the administrative law judge reasonably gave less weight to Dr. Baker=s opinion that claimant was totally disabled because the only basis for the doctor=s opinion was claimant=s pneumoconiosis. Decision and Order at 33; Director=s Exhibit 98.[4] Therefore, the administrative law judge acted within his discretion in giving less weight to the opinions of Drs. Clarke and Baker, that claimant was totally disabled, as they were not well reasoned. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

Further, the administrative law judge acted rationally in granting Dr. Sundaram=s opinion less weight because the doctor failed to discuss the exertional requirements of claimant=s usual coal mine employment. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). The administrative law judge determined that since Dr.

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[4]Dr. Baker characterized claimant=s impairment as Class 1 with the FEV1 and vital capacity both greater than 80% of predicted values. Director=s Exhibit 98. Dr. Baker further opined:

> Based on Section 5.8, Page 106, Chapter Five, Guides to the Evaluation of Permanent Impairment, Fifth Edition, which states that a person who develops pneumoconiosis should limit further exposure to the offending agent. This would imply the patient is 100% occupationally disabled for work in the coal mining industry or similar dusty occupation.

Id.

Sundaram Asimply@ stated that claimant was unable to perform his usual coal mine employment, his opinion was not adequately reasoned without an analysis of the exertional requirements of claimant=s usual coal mine employment. *Id.;* Decision and Order at 32. Dr. Sundaram characterized claimant=s employment history as: Aprolonged exposure to coal dust over 16 years of underground mining [and] 4 years of construction around mines.@ Director=s Exhibit 36. The administrative law judge found that claimant=s work at the belt line and shoveling dust from the air locks required moderate heavy manual labor. Decision and Order at 6; Hearing Transcript at 17, 18. Because the administrative law judge could not infer from Dr. Sundaram=s opinion that the doctor was aware of the nature of claimant=s usual coal mine employment, the administrative law judge reasonably found his opinion less probative. *Cornett,* 227 F.3d 569, 22 BLR 2-107.

In contrast, the administrative law judge found that the contrary opinions of Drs. Rosenberg, Vuskovich, Broudy and Wise, were well reasoned and documented, and demonstrated an understanding of the exertional requirements of claimant=s ususal coal mine employment. Decision and Order at 33,34; Director=s Exhibits 26, 51, 74, 86, 87,93; Employer=s Exhibit 3. Claimant has not challenged these findings. We therefore affirm the administrative law judge=s determination that the opinions of Drs. Baker, Wells, Clarke, Sundaram and Channey, concluding that claimant was totally disabled, are outweighed by the contrary opinions of Drs. Rosenberg, Vuskovich, Broudy and Wise. *Oggero v. Director, OWCP,* 7 BLR 1-860 (1985).

Claimant also asserts that the administrative law judge erred by not comparing the exertional requirements of claimant=s usual coal mine employment with the medical opinions assessing disability; that the administrative law judge should have considered claimant=s age, education and work experience in determining claimant=s ability to perform comparable and gainful employment; and that because pneumoconiosis is a progressive and irreversible disease, claimant=s pneumoconiosis has worsened, and that such worsening would adversely affect his ability to perform his usual coal mine employment.

We reject claimant=s assertion that the administrative law judge erred by not comparing the exertional requirements of claimant=s coal mine employment with the physicians= assessments of claimant=s physical limitations. This analysis is required only in situations where a physician details a claimant=s physical limitations, but does not provide an opinion regarding the extent of any disability from which the claimant suffers. *See Gee v. W.G. Moore and Sons,* 9 BLR 1-4 (1986)(*en banc*); *see also Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd*, 9 BLR 1-104 (1986)(*en banc*). Herein, the administrative law judge rationally found that the medical opinions of record either failed to address the issue of disability, did not identify claimant=s physical

limitations, were not reasoned or documented, or concluded that claimant was not totally disabled. Decision and Order at 31-34.

Furthermore, claimant=s assertion of vocational disability based on his age and limited education and work experience, does not support a finding of total respiratory or pulmonary disability compensable under the Act.[5] 20 C.F.R. ' 718.204(b)(2)(iv); *Carson v. Westmoreland Coal Co.*, 19 BLR 1-16 (1994); *Fields*, 10 BLR 1-19. The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge when they are supported by substantial evidence. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). We, therefore, affirm the administrative law judge=s finding that the medical evidence of record is insufficient to establish a totally disabling respiratory or pulmonary impairment as it is supported by substantial evidence.[6] Decision and Order at 34; *see Fields*,10 BLR 1-19; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff=d on recon.*, 9 BLR 1-236 (1987)(*en banc*).

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[5]Claimant=s reliance on *Bentley v. Director, OWCP*, 7 BLR 1-612 (1982), is misplaced. In *Bentley*, the Board held that age, work experience and education are only relevant to claimant=s ability to perform comparable and gainful work, an issue which did not need to be reached in that case in light of the administrative law judge=s finding, at 20 C.F.R. ' 410.426(a), that claimant did not establish that he had any impairment which disabled him from his usual coal mine employment. *See also* 20 C.F.R. ' 718.204(b)(1)(i), (ii).

[6]We reject claimant=s argument that because pneumoconiosis is proven to be a progressive and irreversible disease, it can be concluded that his condition has worsened and, therefore, that his ability to perform his usual coal mine work or comparable and gainful work is adversely affected, as an administrative law judge=s findings must be based solely on the medical evidence contained in the record. *See* 20 C.F.R. ' 725.477(b).

Since claimant failed to establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(b)(2), a necessary element of entitlement under 20 C.F.R. Part 718, an award of benefits in this miner=s claim is precluded. *See Hill*, 123 F.3d 412, 21 BLR 2-192; *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

BETTY JEAN HALL
Administrative Appeals Judge