

BRB No. 05-0484 BLA

LONNIE CALDWELL)
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 Claimant-Petitioner)
)
 v.)
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 LEECO, INCORPORATED)
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 and)
)
 TRANSCO ENERGY COMPANY) DATE ISSUED: 10/27/2005
)
 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 of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (03-BLA-5773) of Administrative Law Judge Joseph E. Kane rendered 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). The administrative law judge credited claimant with twenty-two years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence did not establish either the existence of pneumoconiosis or that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §§718.202(a), 718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical evidence pursuant to Sections 718.202(a)(1), (a)(4) and 718.204(b)(2)(iv). Claimant also contends that the Director, Office of Workers' Compensation Programs (the Director), failed to comply with its statutory duty to provide claimant with a complete and credible pulmonary evaluation. Employer responds, urging affirmance of the denial of benefits. The Director responds that the mere fact that the administrative law judge found Dr. Hussain's opinion outweighed by more persuasive evidence does not mean that the Director failed to meet his statutory obligation. Additionally, the Director responds that even if Dr. Hussain's diagnosis of pneumoconiosis were questionable, Dr. Hussain credibly found no totally disabling impairment. Consequently, according to the Director, remand for further development of Dr. Hussain's opinion is not required, as it would not change this case's outcome.¹

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203,

¹ No party has challenged the administrative law judge's finding of twenty-two years of coal mine employment, or his finding that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). These findings are therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to Section 718.204(b)(2)(iv), the administrative law judge considered four medical reports. Dr. Hussain, who examined claimant on behalf of the Department of Labor, obtained “normal” pulmonary function and blood gas studies and concluded that claimant is not totally disabled. Director’s Exhibit 15. Drs. Repsher and Rosenberg, on behalf of employer, noted that claimant’s pulmonary function studies are normal, and that his blood gas studies reflect mild, varying hypoxemia due either to heart disease or past cigarette smoking. Director’s Exhibit 17; Employer’s Exhibit 3. Dr. Repsher concluded that claimant “does not have any impairment which has arisen from his coal mine employment,” and is not totally disabled. Employer’s Exhibit 3. Dr. Rosenberg opined that claimant lacks “any significant physiologic impairment” and “from a respiratory perspective” can perform his previous coal mine job. Director’s Exhibit 17. Dr. Baker, on behalf of claimant, examined and tested claimant and opined that:

Patient has a Class II impairment based on the FEV1 between 60 % and 80% of predicted, based on Table 5-12, Page 107, Chapter Five, Guides to the Evaluation of Permanent Impairment, Fifth Edition Patient has a second impairment based on the presence of Pneumoconiosis which is based on Section 5.8, Page 106, Chapter Five, Guides to the Evaluation of Permanent Impairment, Fifth Edition, which states that persons who develop pneumoconiosis should limit further exposure to the offending agent. This would suggest the patient is 100% disabled.

Director’s Exhibit 14.

The administrative law judge found that Dr. Baker’s opinion was not well-reasoned and was not “probative evidence . . . of total disability” because Dr. Baker did not consider claimant’s normal pulmonary function and blood gas studies, and because his recommendation of “the need to avoid coal dust [was] not a sufficient basis to conclude that the miner is totally disabled.” Decision and Order at 11. The administrative law judge was within his discretion to find that Dr. Baker’s opinion was not well-reasoned. *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Additionally, the administrative law judge correctly observed that a statement that a miner should limit further exposure to coal dust does not equate to a finding of total disability. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Taylor v. Evans and Gamble Co.*, 12 BLR 1-83 (1988). Further, the administrative law judge permissibly found that the opinions of Drs. Hussain, Rosenberg, and Repsher indicated “no evidence of respiratory ailments,” and were well-supported and explained.

Decision and Order at 11; *see Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999). Since the administrative law judge properly found that Dr. Baker's impairment rating was not credible, contrary to claimant's assertion, there was no need for the administrative law judge to compare the exertional requirements of claimant's usual coal mine work with Dr. Baker's opinion.

Moreover, contrary to claimant's additional contention, the administrative law judge was not required to consider claimant's age, education, and work experience in determining whether claimant is totally disabled. These factors "are not relevant to the issue of the existence of a respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(iv)." *White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-6-7 (2004). We also reject claimant's argument that pneumoconiosis is a progressive disease that must have worsened, thus affecting his ability to perform his usual coal mine employment, because an administrative law judge's findings must be based solely on the medical evidence of record. *White*, 23 BLR at 1-7 n.8. Therefore, we affirm the administrative law judge's finding that claimant did not establish that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Finally, claimant contends that because the administrative law judge did not credit a diagnosis of pneumoconiosis contained in Dr. Hussain's June 22, 2001 medical report provided by the Department of Labor, "the Director has failed to provide the claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 4-5. The Director responds that the administrative law judge's decision to accord "little weight" to Dr. Hussain's diagnosis of pneumoconiosis does not mean that the Director failed to meet his obligation. The Director also states that a remand for Dr. Hussain to resolve any defects in his opinion regarding the existence of pneumoconiosis would serve no purpose, because Dr. Hussain credibly opined that claimant is not totally disabled. Director's Brief at 2.

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406. The issue of whether the Director has met this duty may arise where "the administrative law judge finds a medical opinion incomplete," or where "the administrative law judge finds that the opinion, although complete, lack credibility." *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); *accord Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 1166, 7 BLR 2-25, 2-31 (8th Cir. 1984).

The record reflects that Dr. Hussain conducted an examination and the full range of testing required by the regulations, and addressed each element of entitlement on the Department of Labor examination form. 20 C.F.R. §§718.101(a), 718.104, 725.406(a);

Director's Exhibit 15. The administrative law judge did not find nor does claimant allege that Dr. Hussain's report was incomplete. With respect to the issue of total disability, the administrative law judge accepted, as well-supported, Dr. Hussain's opinion that claimant retains the respiratory capacity to perform the work of a coal miner. Because Dr. Hussain's opinion regarding total disability--the element of entitlement upon which the administrative law judge based the denial of benefits--was complete and the administrative law judge did not find that it lacked credibility, a remand to the district director is not required. *See Hodges*, 18 BLR at 1-88 n.3.

Because claimant did not establish the presence of a totally disabling respiratory or pulmonary impairment, a requisite element of entitlement in a miner's claim pursuant to 20 C.F.R. Part 718, claimant's entitlement is precluded. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27. We therefore affirm the denial of benefits.

Accordingly, the administrative law judge's Decision and Order – Denying of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge