BRB No. 06-0308 BLA

BOBBY GENE SIMPSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TERCO, INCORPORATED	)	
	)	
and	)	
	)	
KENTUCKY COAL PRODUCERS SELF-INSURANCE FUND	)	DATE ISSUED: 10/26/2006
	)	
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 Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Bobby Gene Simpson, Artemus, Kentucky, *pro se*.

Rodney E. Buttermore, Jr. (Buttermore & Boggs), Harlan, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (04-BLA-6165) of Administrative Law Judge Jeffrey Tureck on a

subsequent claim[1] 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 law judge credited the miner with fifteen years of coal mine employment,[3] and found that the medical evidence submitted since the prior denial of benefits established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). Consequently, the administrative law judge determined that claimant met his burden to establish a change in one applicable condition of entitlement.[4] 20 C.F.R. §725.309(d); *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir.

[1] This claim, claimant's third, was filed on September 26, 2002 and is considered a "subsequent claim for benefits" because it was filed after January 19, 2001 and more than one year after the final denial of a previous claim. 20 C.F.R. §725.309(d); Director's Exhibit 3. Claimant's initial application for benefits, filed on September 27, 1990, was finally denied on March 11, 1991 by the district director because the evidence did not establish the existence of total disability due to pneumoconiosis. Director's Exhibit 1. Claimant took no further action on this prior claim. Claimant's second application for benefits, filed on November 4, 1994, was denied by Administrative Law Judge Hillyard on May 28, 1999. Judge Hillyard found that the evidence established the existence of pneumoconiosis arising out of coal mine employment but did not establish the existence of a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1. Claimant appealed, and in a decision dated June 14, 2000, the Board affirmed the administrative law judge's denial of benefits. Director's Exhibit 1.

[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 record indicates that the miner's last coal mine employment occurred in Kentucky. Director's Exhibits 1, 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[4] Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim shall be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co., Inc*., 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2).

1994); *White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-3 (2004); Decision and Order at 3-4. Considering the merits of the claim, the administrative law judge found that the evidence of record established the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202, 718.203, respectively, as well as a totally disabling respiratory impairment at 20 C.F.R. §718.204(b), but failed to establish that the miner's total disability was due to pneumoconiosis at 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

Claimant generally appeals from the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that the miner was 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, 718.204. Failure to establish any one of these elements precludes a finding of 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).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we affirm the administrative law judge's denial of benefits based on claimant's failure to establish that the miner's pneumoconiosis was a substantially contributing cause of his total disability at 20 C.F.R. §718.204(c). *See Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 611, 22 BLR 2-288 (6th Cir. 2001). Focusing on the more recent reports of Drs. Baker, Timmireddy, Broudy and Dahhan as the most probative, the administrative law judge found that neither Dr. Broudy nor Dr. Dahhan attributed claimant's disabling respiratory impairment to pneumoconiosis or coal dust exposure. *See Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Gillespie v. Badger Coal Co.*, 7 BLR 1-839 (1985); *see also Toler v. Eastern Associated Coal Co.*, 43 F.3d 109 (4th Cir. 1995); Director's Exhibits 13, 14; Decision and Order at 6-7. The administrative law judge noted that, by contrast, Dr. Baker opined that claimant's diagnosed pneumoconiosis, chronic bronchitis, chronic obstructive pulmonary disease [COPD] and hypoxemia, all due in part to coal

dust, and ischemic heart disease due to arteriosclerotic heart disease, each contributed "fully" to claimant's mild respiratory impairment. Director's Exhibit 10; Decision and Order at 6. The administrative law judge permissibly discredited Dr. Baker's opinion, however, because the physician's one-word opinion on whether claimant's disability was due to his pneumoconiosis or coal dust exposure was both unclear and insufficiently explained. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Regarding the opinion of Dr. Timmireddy, claimant's treating physician and the only remaining probative medical opinion of record, the administrative law judge permissibly concluded that while Dr. Timmireddy diagnosed "coal miner's lung," COPD, and shortness of breath due to both these conditions, as the physician did not relate claimant's COPD to coal dust exposure, and never clearly addressed the issues of disability and disability causation, her opinion is insufficient to support a finding of total disability due to pneumoconiosis. The law is well established that whether an opinion is reasoned and documented is a determination to be made by the fact finder based on the validity of the reasoning of a medical opinion in light of the studies conducted and the objective indications upon which the medical conclusion is based. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834 (6th Cir. 2002); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983). In this case, the administrative law judge permissibly discredited Dr. Baker's opinion, the only probative medical opinion which concluded that the miner's pneumoconiosis played any role in causing his totally disabling pulmonary impairment.

Based on the foregoing, we affirm the administrative law judge's finding that claimant failed to meet his burden to establish that he is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), an essential element of entitlement. Consequently, we affirm the administrative law judge's denial of benefits. *Trent*, 11 BLR at 1-27; *Perry v. Director, OWCP*, 9 BLR 1-1, 1-5 (1986)(*en banc*).

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