BRB No. 07-0287 BLA

E.C.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KLINE COAL COMPANY	)	
	)	DATE ISSUED: 10/30/2007
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 Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

E.C., La Follette, Tennessee, *pro se*.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for employer.

Before: McGRANERY, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denying Benefits (06-BLA-5554) of Administrative Law Judge Linda S. Chapman rendered on a subsequent 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). Claimant filed this subsequent claim on February 22, 2005.[1] Director's Exhibit 4. The

[1] Claimant initially filed a claim for benefits on November 12, 1992, which was denied by Administrative Law Judge Ainsworth H. Brown on June 15, 1995 for failure to establish any of the requisite elements of entitlement. Director's Exhibit 1. Claimant filed a subsequent claim for benefits on June 18, 2001. Director's Exhibit 2. In a

district director issued a Proposed Decision and Order denying benefits on January 31, 2006. Director's Exhibit 25. Claimant requested a hearing, which was held on September 20, 2006. In her Decision and Order dated November 17, 2006, the administrative law judge determined that the newly submitted evidence was sufficient to establish that claimant had a totally disabling respiratory or pulmonary impairment; and thus, she found that claimant had demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). However, after considering all of the record evidence on the merits of the claim, the administrative law judge found that claimant failed to establish that he suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the denial of his claim. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co*., 12 BLR 1-176, 1-177 (1989). 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.[2] 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, 363 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, a claimant must establish that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that his pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any

---

Decision and Order dated January 15, 2003, Administrative Law Judge Richard T. Stansell-Gamm determined that the newly submitted evidence failed to demonstrate a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, and thus, he denied benefits. *Id*. Claimant took no further action with regard to the denial of his 2001 claim until he filed his current, subsequent claim on February 22, 2005. Director's Exhibit 4.

[2] Because claimant's last coal mine employment was in Tennessee, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibits 1, 2.

one 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's prior claim was denied because he failed to establish the existence of pneumoconiosis or a totally disabling respiratory or pulmonary impairment. Director's Exhibit 2. Because the administrative law judge found that the newly submitted arterial blood gas study values were qualifying, and entitled to controlling weight in her consideration of all of the new evidence for total disability pursuant to 20 C.F.R. §718.204(b)(2), she found that that claimant had demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). The administrative law judge then turned her attention to the merits of the claim.

In this case, the administrative law judge denied benefits because she found that a preponderance of the evidence failed to establish that claimant suffered from pneumoconiosis. In weighing the x-ray evidence at 20 C.F.R. §718.202(a)(1), the administrative law judge correctly stated that the record consisted of sixteen readings of six x-rays obtained between 1993 and 2006. Director's Exhibits 1, 2, 10, 12; Employer's Exhibit 1. Of these sixteen readings, there was only one positive reading for pneumoconiosis; it was of an x-ray dated April 7, 2005 by Dr. Baker, a B reader. Decision and Order at 8; Director's Exhibit 10. The administrative law judge, however, permissibly assigned little weight to Dr. Baker's positive reading since she determined that the same x-ray was also read as negative for pneumoconiosis by a better qualified physician, Dr. Wiot, who is a Board-certified radiologist and B reader. *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); Decision and Order at 8-9. Because the administrative law judge properly considered both the quantity and the quality of the x-ray evidence, *Woodward*, 991 F.2d at 320, 17 BLR at 2-87, and she correctly determined that the preponderance of the x-ray readings was negative for pneumoconiosis, we affirm her finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993), *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*).

Because there is no biopsy evidence of record, the administrative law judge properly found that claimant was unable to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order at 9. Under 20 C.F.R. §718.202(a)(3), a determination of the existence of pneumoconiosis may be made by using the presumptions set out in 20 C.F.R. §§718.304, 718.305, or 718.306. However, since claimant was not eligible for any of these presumptions, the administrative law judge correctly found that he was unable to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(3). *Id.*

Finally, under 20 C.F.R. §718.202(a)(4), a "determination of the existence of pneumoconiosis may be made if a physician, exercising sound medical judgment,

notwithstanding a negative X-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.202(a)(4). The administrative law judge properly recognized that Dr. Baker was the only physician of record to opine that claimant suffers from "legal" pneumoconiosis, and that the doctor had examined claimant on two occasions at the request of the Department of Labor (DOL). Dr. Baker examined claimant on August 8, 2001 and diagnosed chronic obstructive pulmonary disease (COPD) with a mild obstructive defect, attributable to coal dust exposure and smoking. Director's Exhibit 2. However, in response to a questionnaire provided by DOL, Dr. Baker answered "no" when asked whether the miner suffered from an occupational lung disease caused by his coal mine employment. *Id*. In conjunction with his April 17, 2005 examination, Dr. Baker diagnosed coal workers' pneumoconiosis, COPD and chronic bronchitis due, in part, to coal dust exposure and smoking. Director's Exhibit 10. Although Dr. Baker specifically opined that claimant suffers from a chronic dust disease of the lung due in part to coal mine employment, the doctor did not consider claimant to have legal pneumoconiosis because his respiratory impairment was caused "predominately (*sic*)" by his thirty-eight pack year history of smoking, and "probably less than one-third and may be only 15 to 25 [percent] at best," by his fourteen years of coal dust exposure. *Id.*

Although the administrative law judge acknowledged that Dr. Baker's diagnoses in his 2001 and 2005 reports were consistent with the legal definition of pneumoconiosis, she found the reports to be internally inconsistent. Decision and Order at 9. She stated that in his 2001 report, Dr. Baker initially indicated that claimant had legal pneumoconiosis because his impairment was partially due to coal mine employment, but in the attachment to that report, Dr. Baker answered "no" to the question of whether claimant had an occupational lung disease caused by coal mine employment. Decision and Order at 9-10. The administrative law judge stated that similarly, in his 2005 report, the doctor affirmatively diagnosed COPD and chronic bronchitis due to coal dust exposure, but in that report's addendum, Dr. Baker qualified his diagnosis by stating that claimant "suffers from '*possible* mild obstructive defect' (emphasis added) and that 'he is not felt to have 'legal' pneumoconiosis . . . ." Decision and Order at 10, quoting Director's Exhibit 10. The administrative law judge accorded Dr. Baker's opinion "little, if any weight" because she was "unable to discern precisely what position Dr. Baker takes on the question of whether [claimant] has 'legal' pneumoconiosis . . . ." Decision and Order at 10.

We are unable to affirm the administrative law judge's finding at 20 C.F.R. §718.202(a)(4). Although an administrative law judge has discretion to reject a medical opinion when the doctor's diagnosis is unclear, s*ee Clark*, 12 BLR at 1-151; *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111 (1989), in this case, the administrative law judge placed undue emphasis on whether Dr. Baker characterized claimant's condition as "legal pneumoconiosis." Decision and Order at 10. A determination as to whether a medical diagnosis satisfies the legal definition of pneumoconiosis pursuant to 20 C.F.R.

§718.201 is ultimately a legal determination to be made by the administrative law judge, and not a medical determination.[3] Thus, it is irrelevant whether Dr. Baker labeled claimant's condition as legal pneumoconiosis.

Consequently, we vacate the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and we remand this case for the administrative law judge to determine whether Dr. Baker's medical findings are sufficient to establish that claimant suffers from a chronic dust disease of the lung, significantly related to, or substantially aggravated by, coal dust exposure in coal mine employment, as defined at Section 718.201. If the administrative law judge finds that Dr. Baker has provided a credible diagnosis of pneumoconiosis, she must weigh the conflicting evidence to determine whether claimant has established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). If so, she must consider the remaining elements of entitlement.

[3] The Act defines "pneumoconiosis" as "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment." 30 U.S.C. §902(b). The revised regulation at 20 C.F.R. 718.201(a) provides that this definition includes both clinical and legal pneumoconiosis, and further defines "legal" pneumoconiosis as including "any chronic lung disease or impairment or its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The regulations define a disease "arising out of coal mine employment" as including only those chronic pulmonary diseases or respiratory or pulmonary impairments significantly related to or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

Accordingly, the administrative law judge's Decision and Order –Denying Benefits is affirmed in part, and vacated in part, and the case is remanded for further consideration.

SO ORDERED.

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge