BRB No. 99-1316 BLA

SHEDRICK L. CASTEEL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED:
	)	
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 Benefit [sic] of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

C. Patrick Carrick (Law Office of C. Patrick Carrick), Morgantown, West Virginia, for claimant.

William S. Mattingly (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant[1] appeals the Decision and Order - Denying Benefit [sic] (98-BLA-0154) 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). The administrative law judge, adjudicating this claim pursuant to 20 C.F.R. Part 718, credited claimant with thirty-four years and eight months of qualifying coal mine employment. Next, the administrative law judge found that claimant failed to establish

[1] Claimant is Shedrick L. Casteel, the miner, who filed his application for benefits on March 19, 1997. Director's Exhibit 1.

the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b) and invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erroneously weighed the medical evidence in finding that claimant failed to establish the existence of pneumoconiosis arising out of coal mine employment under Sections 718.202(a) and 718.203(b), and the existence of complicated pneumoconiosis pursuant to Section 718.304. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating his intention not to participate in this appeal.

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 the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

With respect to Section 718.202(a), claimant argues that the administrative law judge impermissibly weighed the x-ray and medical opinion evidence together in accordance with *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997), to determine whether claimant established the existence of pneumoconiosis. We disagree. Subsequent to the issuance of the administrative law judge's Decision and Order in this case, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises,[2] adopted the holding in *Williams* and held that the administrative law judge must weigh all of the evidence under Section 718.202(a)(1)-(4) together to determine whether the evidence, as a whole, establishes the presence of pneumoconiosis by a preponderance of the evidence. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, BLR (4th Cir. 2000). Applying the holding in *Williams*, the administrative law judge initially found that the preponderance of the x-ray interpretations was positive for pneumoconiosis under Section 718.202(a)(1).[3] Decision and Order at 7. However, the administrative law judge, within a

[2] Since the miner's most recent coal mine employment occurred in the state of West Virginia, the United States Court of Appeals for the Fourth Circuit has appellate jurisdiction over the case at bar. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989); Hearing Transcript at 16.

[3] In addition, the administrative law judge stated if *Williams* was inapplicable to the instant case, "... I must find that claimant has established the existence of pneumoconiosis based on the chest x-rays," Decision and Order at 8. This determination is contrary to

proper exercise of his discretion, found the opinions of Drs. Jaworski, Renn, Morgan, and Wiot, that claimant has interstitial pulmonary fibrosis which did not arise out of coal mine employment, were entitled to greater weight because these physicians' opinions were well reasoned. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88 (1993); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 7; Director's Exhibits 8, 20, 24; Employer's Exhibits 1, 4, 9-11, 13, 14. Inasmuch as the administrative law judge conducted a proper weighing of the evidence relevant to the existence of pneumoconiosis in accordance with *Compton*, we reject claimant's argument. *See Compton*, *supra*; *Williams*, *supra*.

Claimant argues further that the administrative law judge erroneously rejected the opinion of Dr. Rasmussen, the sole physician of record to opine that coal mine dust exposure may have contributed to claimant's interstitial pulmonary fibrosis. Specifically, claimant avers that the credibility of Dr. Rasmussen's opinion is bolstered because he opined that coal dust exposure was one of the causes of claimant's pulmonary condition and declined to opine that coal dust exposure was the sole cause.[4] We disagree. The administrative law judge reasonably determined that Dr. Rasmussen's opinion was "highly equivocal" and "entirely too imprecise" based on Dr. Rasmussen's statement that coal dust exposure was a possible cause of claimant's lung disease and therefore, could not be ruled out. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764, 21 BLR 2-589, 2-066 (4th Cir. 1999); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order at 7; Claimant's Exhibits 4, 8. Additionally, the administrative law judge found that because Dr. Rasmussen admitted that there is inadequate epidemiological evidence demonstrating a causal nexus between interstitial pulmonary fibrosis and coal mine dust exposure, his opinion was worthy of less weight. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); Decision and Order at 7; Claimant's Exhibit 8 at 26.

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claimant's contention that the administrative law judge's "discussion of the x-ray evidence clearly indicates that he was predisposed toward denying benefits." Claimant's Brief at 4.

[4] During his deposition on July 13, 1999, Dr. Rasmussen opined that the causes of claimant's severe disabling pulmonary disease are "possibly his lymphoma; possibly his chemotherapy; possibly coal mine dust exposure; ... possibly diffuse interstitial pulmonary fibrosis." Claimant's Exhibit 8 at 31.

Claimant argues that the administrative law judge erred by failing to invoke the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304 based on the x-ray readings of Dr. Patel, a Board-certified radiologist and B-reader, establishing the presence of complicated pneumoconiosis. Claimant's argument lacks merit. The administrative law judge permissibly found that the preponderance of the evidence of record failed to establish invocation of the irrebuttable presumption inasmuch as only one of Dr. Patel's x-ray interpretations affirmatively established the existence of complicated pneumoconiosis.[5] *See Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *see also Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, BLR (4th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991) (*en banc*); Decision and Order at 7 n.3; Claimant's Exhibits 5-7. Inasmuch as the administrative law judge's determination is rational and supported by substantial evidence, we affirm his Section 718.304 finding.

Inasmuch as claimant failed to satisfy his burden of establishing the existence of pneumoconiosis pursuant to Section 718.202(a), a requisite element of entitlement under Part 718, or invocation of the irrebuttable presumption pursuant to Section 718.304, we affirm the Decision and Order of the administrative law judge denying benefits. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).[6]

[5] A review of the record reveals that Dr. Patel provided readings of four films dated May 9, 1990, August 5, 1992, September 18, 1997, and January 22, 1999. Claimant's Exhibits 5-7. Dr. Patel affirmatively diagnosed a "large opacity, Category A" only after reading the January 22, 1999 chest x-ray. Claimant's Exhibit 6.

[6] Our affirmance of the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) obviates the necessity to address claimant's arguments with respect to total respiratory disability. Claimant's Brief at 4.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge