BRB No. 00-1194 BLA

CHARLES WILLIAM BRAUGHAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
PRATT MINING COMPANY	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employer/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 Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

Robert Weinberger, Charleston, West Virginia, for employer.

Sarah M. Hurley (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (1999-BLA-00701) of Administrative Law Judge Richard E. Huddleston denying benefits 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).[1] Based on a stipulation by the parties, the administrative law judge

[1] 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 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments

credited claimant with at least twelve and one-half years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718 (2000). The administrative law judge judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in his evaluation of the medical opinion evidence in finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a) (2000). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief on the merits in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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).

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 disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204 (2000). Failure of claimant to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. The administrative law judge permissibly found that the x-ray evidence was insufficient to establish the existence of pneumoconiosis since the evidence was "reasonably well balanced both for and against a finding of pneumoconiosis" and all of the x-ray interpretations were rendered by physicians with superior qualifications. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); Decision and Order at 3, 6; Director's Exhibits 14-17; Employer's Exhibits 1-6. In addition, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2), (3)(2000) as there was no biopsy evidence in the record, this is a living miner's claim filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. 20 C.F.R. §§718.304, 718.305, 718.306

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made by the parties regarding the impact of the challenged regulations.

(2000); *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986); Decision and Order at 5-6.

In his evaluation of the medical opinion evidence, the administrative law judge found that Dr. Rasmussen diagnosed pneumoconiosis, while Dr. Zaldivar, in spite of his own positive x-ray reading, diagnosed pulmonary fibrosis unrelated to coal mine employment and stated that claimant did not have coal workers' pneumoconiosis. Decision and Order at 6; Director's Exhibit 10; Claimant's Exhibit 1; Employer's Exhibit 3. The administrative law judge discussed Dr. Zaldivar's conclusion that the x-ray findings showed pulmonary fibrosis instead of pneumoconiosis: because the physical examination showed clubbing of the fingernail beds; because there was a very low diffusing capacity on the pulmonary function studies; the blood gas studies showed marked deterioration in blood gas values with exercise; and because the restriction in total lung capacity and forced vital capacity on the pulmonary function studies were compatible with pulmonary fibrosis and not pneumoconiosis. Decision and Order at 6; Employer's Exhibit 3. In addition, the administrative law judge also discussed the bases for Dr. Rasmussen's diagnosis as well as Dr. Rasmussen's opinion regarding the biochemical and cellular mechanisms by which coal dust exposure can cause diffuse interstitial fibrosis and that dust exposure could not be excluded as a factor in claimant's impairment. Decision and Order at 6; Director's Exhibit 10; Claimant's Exhibit 1. In weighing the conflicting evidence, the administrative law judge noted that Dr. Zaldivar's training, certification and experience in radiology lent credence to his x-ray reading and that his opinion was well explained in light of the objective evidence of record.[2] Decision and Order at 6; Employer's Exhibit 3.

Considering the x-ray and medical opinion evidence together, the administrative law judge reasonably determined that he could not find a basis for crediting the opinion of Dr. Rasmussen over the contrary opinion of Dr. Zaldivar and rationally found that claimant had failed to establish the existence of pneumoconiosis by a preponderance of the evidence. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2- (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark*, *supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order at 6.

The administrative law judge, as the trier-of-fact, has broad discretion to assess the evidence of record and draw his own conclusions and inferences therefrom, *see Maddaleni v.*

[2] Dr. Zaldivar, M.D., F.A.C.P., F.C.C.P., is a certified B reader and is board-certified in pulmonary diseases, internal medicine, sleep disorder and critical care medicine. Employer's Exhibit 3.

The Pittsburg & Midway Coal Mining Co., 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986), and to determine whether an opinion is documented and reasoned, *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987)*; Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Inasmuch as the administrative law judge's function is to resolve the conflicts in the medical evidence, *see Lafferty*, *supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), the administrative law judge's credibility determination regarding the documentation and reasoning in Dr. Zaldivar's opinion is affirmed. Consequently, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis. *Anderson*, *supra*; *Trent*, *supra*.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) (2001), a requisite element of entitlement under 20 C.F.R. Part 718, we affirm the administrative law judge's denial of benefits and we need not address claimant's other arguments on appeal.[3]

[3] The amended regulations did not alter 20 C.F.R. §718.202(a) in any material respect. 20 C.F.R. §718.202(a) (2001).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge