BRB No. 02-0881 BLA

JOHN H. WILDER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 09/10/2003
	)	
and	)	
	)	
SUN COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
ACCORDIA EMPLOYERS= SERVICE	)	
	)	
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 of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Claimant appeals the Decision and Order (01-BLA-0705) of Administrative Law Judge Thomas F. Phalen, Jr. 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] In this request for modification, the administrative law judge considered the newly submitted evidence, in conjunction with the prior evidence, and found it insufficient to establish the existence of pneumoconiosis or total disability, and thus insufficient to establish a change in conditions. Accordingly, benefits were denied.[2]

On appeal, claimant contends that the administrative law judge erred in not finding the existence of pneumoconiosis and total disability established. Employer has not responded to this appeal. The Director, Office of Workers= Compensation Programs, has filed a letter indicating that he will not participate 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 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.

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[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, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

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[2] Claimant filed a claim for benefits on January 3, 1995. Administrative Law Judge Gerald M. Tierney denied the claim on September 30, 1996 because claimant failed to establish the existence of pneumoconiosis or total disability. The denial was affirmed by the Board on August 13, 1997. Claimant requested modification. Administrative Law Judge Joseph E. Kane, considering the newly submitted evidence, in conjunction with prior evidence, concluded that claimant again failed to establish the existence of pneumoconiosis or total disability and denied the request. The Board affirmed that denial. Claimant filed another request for modification, the denial of which is now on appeal before us.

'932(a); *O=Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On appeal, claimant contends that the administrative law judge erred by relying almost solely on the qualifications of the x-ray readers and selectively analyzing the evidence to find that the x-ray evidence did not establish the existence of pneumoconiosis. In finding that the new x-ray evidence and the previously submitted x-ray evidence did not establish the existence of pneumoconiosis, the administrative law judge credited the weight of the negative x-ray readings by dually qualified, Board-certified, B-readers. This was proper. 20 C.F.R. '718.202(a)(1); *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). Claimant=s argument is, therefore, rejected.

Claimant next contends that the administrative law judge erred in rejecting the opinions of Drs. Baker, Bushey, and Myers, who found the existence of pneumoconiosis, as unreasoned. In finding that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. '718.202(a)(4), the administrative law judge noted that the record contained only one new opinion, that of Dr. Broudy, who once again concluded that claimant did not have pneumoconiosis. The administrative law judge placed great weight on Dr. Broudy=s opinion because it was based on a recent, thorough examination of claimant, because Dr. Broudy had the opportunity to examine claimant three times over a range of five years beginning in 1996, because Dr. Broudy had the opportunity to review Dr. Bushey=s report, and because Dr. Broudy maintained excellent credentials in internal and pulmonary medicine. This was rational. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The administrative law judge went on to find that no mistake had been made by the prior administrative law judges when they found that the prior medical opinion evidence did not establish the existence of pneumoconiosis. The administrative law judge concluded, therefore, that the new medical opinion, considered in conjunction with the previous medical opinion evidence, did not establish the existence of pneumoconiosis. This was rational. *Clark*, 12 BLR 1-149; *Stark*, 9 BLR 1-36. Thus, contrary to claimant=s argument, the administrative law judge properly found that the opinion of Dr. Broudy was entitled to greater weight than the opinions of Drs. Baker, Bushey and Myers. *Clark*; 12 BLR at 149; *Dillon*, 11 BLR 1-113; *Stark* at 9 BLR 1-36. Accordingly, we affirm the administrative law judge=s finding that the medical opinion evidence failed to establish the existence of pneumoconiosis.

Finally, claimant argues that the administrative law judge erred in not finding total disability established. In finding that the medical opinion evidence failed to establish total disability, the administrative law judge found that all the pulmonary function and blood gas studies of record were non-qualifying. Regarding the medical opinion evidence, the

administrative law judge accorded greater weight to the opinions of Dr. Broudy than to the opinions of Drs. Bushey, Baker, and Myers because it was supported by the objective evidence of record and Dr. Broudy=s excellent credentials. This was rational. *Clark*, 12 BLR 1-149; *Dillon*, 11 BLR 1-113; *Stark*, 9 BLR 1-36. The administrative law judge=s finding that claimant failed to establish total disability is, therefore, affirmed, as is his finding that claimant failed to establish a basis for modifying the prior denial of benefits. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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PETER A. GABAUER, Jr.
Administrative Appeals Judge