

BRB No. 03-0841 BLA

ROBERT N. YOST	)	
	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED: 09/03/2004
	)	
CONSOLIDATION COAL COMPANY	)	
	)	
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 on Remand of Alice M. Craft,  
Administrative Law Judge, United States Department of Labor.

Robert N. Yost, North Tazewell, Virginia, *pro se*.

Ashley M. Harman (Jackson & Kelly PLLC), Morgantown, West Virginia,  
for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand (00-BLA-0501) of Administrative Law Judge Alice M. Craft (the administrative law judge) on a duplicate 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).<sup>1</sup> The case is before the Board for the second time. On remand, the administrative law judge found

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<sup>1</sup>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.

that the evidence as a whole was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied the claim.

The relevant procedural history of this case is as follows: Claimant filed claims with the Department of Labor (DOL) on December 28, 1973, January 2, 1985 and November 14, 1990. Director's Exhibits 22, 23, 24. Each of these claims was denied. *Id.* Claimant filed a fourth claim for benefits with DOL on June 25, 1999. Director's Exhibit 1. In a Decision and Order dated August 10, 2001, the administrative law judge found that claimant established a material change in conditions pursuant to 20 C.F.R. §725.309(d)(2000). On the merits, the administrative law judge found that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(a)(4)(2000). Following claimant's *pro se* appeal, the Board affirmed the administrative law judge's findings that the evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(a)(3)(2000), but remanded the case for the administrative law judge to consider all of the medical opinions of record *de novo* at Section 718.202(a)(4), and, if applicable, to weigh all of the evidence together at Section 718.202(a)(1)-(a)(4), citing *Island Creek Coal Co. v. Compton*, 211 F. 3d 203, 22 BLR 2-162 (4th Cir. 2000). *Yost v. Consolidation Coal Co.*, BRB No. 01-0945 BLA (July 24, 2002)(unpub.). On remand, the administrative law judge found that the medical opinions of record failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). The administrative law judge concluded, therefore, that the evidence as a whole failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) and, therefore, denied benefits. Claimant then filed the instant appeal.

On appeal, claimant generally challenges the administrative law judge's Decision and Order. Employer, in response to claimant's appeal, asserts that the administrative law judge's findings are supported by substantial evidence, and thus, that the administrative law judge's denial of benefits should be affirmed. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a response brief.

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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. 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 considering the evidence at Section 718.202(a)(4), the administrative law judge summarized the eleven medical opinions of record and found that four, by Drs. Abernathy,

Taylor, Rasmussen and Forehand, opined that claimant suffers from pneumoconiosis. Decision and Order at 3-5; Director's Exhibits 8, 10, 22-24; Claimant's Exhibit 1. She then found that seven doctors, Drs. Palte, Hippensteel, Fino, Castle, Morgan, Loudon and Stewart, opined that claimant did not have pneumoconiosis. Decision and Order at 5-16; Director's Exhibit 24; Employer's Exhibits 4, 8, 9, 11, 13, 15, 17-23. The administrative law judge initially gave less weight to the opinion of Dr. Palte, a finding that employer has not challenged on appeal. She then permissibly credited the opinions of Drs. Hippensteel, Fino, Castle, Morgan, Loudon and Stewart, over those of Drs. Abernathy, Taylor, Rasmussen and Forehand, on the basis that the former physicians possessed "excellent qualifications", while the latter's qualifications were not of record.<sup>2</sup> See *Worhach v. Director, OWCP*, 17 BLR 1-105(1993); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*), *aff'd sub nom. Director, OWCP v. Cargo Mining Co.*, Nos.88-3531, 88-3578 (6th Cir. May 11, 1989)(unpub.); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). Moreover, the administrative law judge properly gave greater weight to the opinions of the doctors who found that claimant did not suffer from pneumoconiosis because she found that they provided more sufficient reasoning and explanation. See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Cooper v. Director, OWCP*, 11 BLR 1-95 (1988)(Ramsey, CJ, concurring); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge rationally found that these doctors provided detailed explanations for their conclusions, while the doctors who found that claimant suffers from pneumoconiosis did not provide support for their conclusions.<sup>3</sup> In addition, the administrative law judge permissibly found that the opinions of Drs. Hippensteel, Fino, Castle, Morgan, Loudon and Stewart were based upon more extensive documentation and were better supported by the objective evidence of record. See *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986);

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<sup>2</sup>The administrative law judge correctly noted that Drs. Hippensteel, Fino, Castle and Stewart were all Board-certified in both internal medicine and pulmonary disease. Director's Exhibits 24-26; Employer's Exhibits 4, 20. Further, the administrative law judge properly noted that Drs. Morgan and Loudon both hold academic positions in pulmonary disease. Dr. Morgan is a Professor of Medicine at the University of Western Ontario. Employer's Exhibit 17. Dr. Loudon is a Professor Emeritus at the University of Cincinnati. Employer's Exhibit 18. Further, the administrative law judge properly noted that, of the four doctors who opined that claimant suffers from pneumoconiosis, "none of their qualifications are explained in the record, except that Dr. Forehand is a B-reader." Decision and Order at 16.

<sup>3</sup>When summarizing the medical opinions of record, the administrative law judge noted that the opinions of Drs. Abernathy, Taylor, Rasmussen and Forehand relied upon only claimant's history of coal mine employment and symptoms to opine that claimant suffers from pneumoconiosis. Decision and Order at 3-4.

*Sabett v. Director, OWCP*, 7 BLR 1-299 (1984). We affirm, therefore, the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Consequently, we affirm the administrative law judge's finding that the evidence as a whole fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a).

As claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the denial of benefits in the instant claim. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

Accordingly, the administrative law judge's Decision and Order on Remand 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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BETTY JEAN HALL  
Administrative Appeals Judge