BRB No. 05-0273 BLA

CHUCKY COOTS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BLEDSOE COAL CORPORATION	)	DATE ISSUED: 09/30/2005
	)	
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 of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (03-BLA-6059) of Administrative Law Judge Daniel J. Roketenetz (the administrative law judge) 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). The administrative law judge credited claimant with twenty-six years of coal mine employment based on the parties' stipulation and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §§718.204(b)(2)(i)-(iv) and total disability due to pneumoconiosis pursuant to 20 C.F.R.

§718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also challenges the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[1]

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

Claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). We disagree. The administrative law judge considered the reports of Drs. Hussain, Broudy, Repsher and Baker. In a report dated December 19, 2001, Dr. Hussain opined that claimant does not suffer from a pulmonary impairment. Director's Exhibit 9. Similarly, Dr. Broudy, in a report dated February 13, 2002, opined that claimant does not suffer from a respiratory impairment. Director's Exhibit 27. During a deposition dated December 19, 2002, Dr. Broudy opined that claimant retains the respiratory capacity to do his usual coal mine work or similar arduous manual labor. *Id*. In a report dated January 15, 2004, Dr. Repsher opined that claimant does not suffer from a respiratory impairment and that he retains the respiratory ability to perform the work of an underground coal miner or to do work requiring a similar degree of physical labor. Employer's Exhibit 8. During a deposition dated February 28, 2004, Dr. Repsher opined that claimant could perform any job in the coal mine, even that requiring sustained physical exertion. Employer's Exhibit 9. Lastly, Dr. Baker noted "minimal to none" in the impairment section of a report dated April 2, 2003. Claimant's Exhibit 1.

Based on his consideration of the reports of Drs. Hussain, Broudy, Repsher and Baker, the administrative law judge stated that "[n]o physician finds the [c]laimant to be suffering from a totally disabling pulmonary impairment." Decision and Order at 14. Further, the

[1]Since the administrative law judge's findings that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

administrative law judge stated that "[the] medical opinions of [Drs. Broudy, Repsher and Hussain] affirmatively establish that the [c]laimant is not totally disabled from a pulmonary or respiratory impairment." *Id*.

Claimant asserts that the administrative law judge erred in failing to compare the exertional requirements of claimant's usual coal mine work with Dr. Baker's assessment of claimant's impairment. As discussed *supra*, Dr. Baker opined that claimant suffers from either a minimal impairment or no impairment at all. Claimant's Exhibit 1. Since Dr. Baker did not definitively opine that claimant suffers from an impairment, *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 22 BLR 2-25 (6th Cir. 2000); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987), Dr. Baker's opinion is insufficient to establish total disability, *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Beatty v. Danri Corp. and Triangle Enterprises*, 16 BLR 1-11 (1991). Consequently, we reject claimant's assertion that the administrative law judge erred in failing to compare the exertional requirements of claimant's usual coal mine work with Dr. Baker's assessment of claimant's impairment. *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd*, 9 BLR 1-104 (1986)(*en banc*).

We also hold that, contrary to claimant's statement, an administrative law judge is not required to consider claimant's age, education and work experience in determining whether claimant has established that he is totally disabled from his usual coal mine work. *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83, 1-87 (1988). Further, we reject claimant's assertion that the administrative law judge erred in failing to conclude that his condition has worsened to the point that he is totally disabled, since pneumoconiosis is a progressive and irreversible disease. The record contains no credible evidence that claimant is totally disabled from a respiratory impairment. 20 C.F.R. §718.204(b)(2)(iv). Thus, since it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv).

Since claimant failed to establish total disability at 20 C.F.R. §718.204(b), an essential element of entitlement, we hold that the administrative law judge properly denied benefits under 20 C.F.R. Part 718.[2] *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

[2]In view of our disposition of this case at 20 C.F.R. §718.204(b), we decline to address claimant's assertions with regard to 20 C.F.R. §718.202(a)(1) and (a)(4).

Accordingly, the administrative law judge's Decision and Order 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