BRB No. 05-0416 BLA

EARL SALYERS, JUNIOR	)	
	)	
Claimant-Petitioner	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 09/12/2005
	)	
	)	
and	)	
	)	
JAMES RIVER COAL COMPANY	)	
	)	
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 – Denial of Benefits 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/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (03-BLA-6685) of Administrative Law Judge Daniel J. Roketenetz (the administrative law judge) denying benefits on a subsequent 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] The administrative law judge found that the newly submitted evidence failed to establish the existence of pneumoconiosis or total disability, elements of entitlement previously adjudicated against claimant and, therefore, found that claimant failed to establish a change in an applicable condition of entitlement.[2] Benefits were, accordingly, denied.[3]

On appeal, claimant challenges the administrative law judge's findings that the newly submitted x-ray interpretation evidence and medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4). Claimant also contends that the administrative law judge erred in finding that the newly submitted medical opinion evidence failed to establish total respiratory disability pursuant to 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, is not participating in this appeal.[4]

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).

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[1] This is claimant's fourth claim. It was filed July 11, 2003. Previous claims filed by claimant were denied.

[2] In addressing whether a change in an applicable condition of entitlement has been established, the administrative law judge refers to whether a material change in condition has been established, the language used in the predecessor regulation 20 C.F.R. §725.309 (2000).

[3] The administrative law judge also found, in light of claimant's failure to establish the existence of pneumoconiosis, and a totally disabling respiratory impairment that claimant failed to establish that disability was due to pneumoconiosis at 20 C.F.R. §718.204(c), another essential element of entitlement.

[4] The administrative law judge's findings that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3) or total disability pursuant to 20 C.F.R. §718.204(b)(i)-(iii) are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove 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. Failure 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)(*en banc*).

Claimant first contends that the administrative law judge erred in failing to find that the new x-ray interpretation evidence established the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant asserts that the administrative law judge improperly relied upon the negative x-ray interpretations of physicians with superior credentials and the numerical superiority of the negative x-ray readings, noting that the Board has held that an administrative law judge is not required to defer to doctors with superior qualifications, nor is he required to accept as conclusive the numerical weight of x-ray interpretations. Claimant's Brief at 2-3.

Contrary to claimant's argument, however, in finding that the x-ray evidence did not establish the existence of pneumoconiosis, the administrative law judge gave greater weight to the preponderance of the negative x-ray interpretation evidence by the physicians who possessed superior radiological qualifications. This was proper. Decision and Order at 12-13. The administrative law judge's evaluation of the x-ray evidence constituted a proper qualitative and quantitative analysis of the x-ray interpretation evidence. 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk and Western Railway 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). Accordingly, we reject claimant's argument regarding the administrative law judge's analysis of the x-ray evidence at Section 718.202(a)(1) and affirm his finding that the new x-ray evidence failed to establish the existence of pneumoconiosis, and thereby, a change in an applicable condition of entitlement. In addition, we reject claimant's contention that the administrative law judge "may" have "selectively analyzed" the x-ray evidence. Claimant's Brief at 3. This argument is rejected as claimant provides no support for this general allegation. *White v. New White Coal Co.*, 23 BLR 1-1, 1-5 (2004); *see Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986).

Claimant next challenges the administrative law judge's finding that the medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Claimant asserts that the administrative law judge should have credited the documented and reasoned opinion of Dr. Simpao, who found coal workers' pneumoconiosis and a mild pulmonary impairment due to coal mine employment on physical examination, medical and work histories, pulmonary function study, arterial blood gas study and chest x-ray. Claimant's Brief at 4-5.

In considering the newly submitted medical opinions, the administrative law judge concluded that since Drs. Simpao, Dahhan, and Rosenberg all submitted well-reasoned and well documented opinions regarding the existence of pneumoconiosis inasmuch as Dr. Simpao was the only physician to find the existence of pneumoconiosis and both Drs. Dahhan and Rosenberg found that claimant did not have pneumoconiosis, the preponderance of the medical opinion evidence failed to establish the existence of pneumoconiosis. This was permissible. Decision and Order at 16; *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v.Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). We reject, therefore, claimant's contention and we affirm the administrative law judge's finding that the new medical opinion evidence failed to establish the existence of pneumoconiosis and consequently a change in an applicable condition of entitlement.

Finally, claimant challenges the administrative law judge's finding that the newly submitted medical opinion evidence of record fails to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). Specifically, claimant asserts that Dr. Simpao's opinion, that claimant did not have the respiratory capacity to perform the work of a coal miner or to perform comparable work in a dust-free environment due to coal workers' pneumoconiosis and that claimant had a mild pulmonary impairment which was based on claimant's work history, pulmonary function study, blood gas, x-ray, physical exam and work and medical histories, was sufficient to establish a totally disabling respiratory disability impairment. Director's Exhibit 15.

In considering the medical opinion evidence, the administrative law judge credited the opinions of Drs. Dahhan and Rosenberg, who found that claimant was able to return to his prior coal mine employment and was not totally disabled by a respiratory impairment, as their opinions were better supported by their underlying documentation than the opinion of Dr. Simpao. This was permissible. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 n.4 (1993), *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Lucostic v. Director, OWCP*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291, 1-1294 (1984). Further, because the administrative law judge permissibly credited the opinions of physicians who found that claimant did not have a totally disabling respiratory impairment, the administrative law judge was not required to compare the medical opinions with the exertional requirements of claimant's usual coal mine employment. *See Beatty v. Danri Corp.*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995) *aff'g* 16 BLR 1-11 (1991); *Jewell Smokeless Coal Corp. v. Street*, 42 F.3d 241, 19 BLR 2-1 (4th Cir. 1994).

Moreover, contrary to claimant's contentions, 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 employment. *See*

White, 23 BLR at 1-6; *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988). Nor, contrary to claimant's assertion, does a finding of total disability necessarily follow from a diagnosis of pneumoconiosis. *See White*, 23 BLR at 1-6. We reject , therefore, all of claimant's contentions, and we affirm the administrative law judge's finding that the newly submitted evidence fails to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). We affirm, therefore, the administrative law judge's finding that the new evidence failed to establish a change in an applicable condition of entitlement.

Accordingly, the Decision and Order – Denial of Benefits of the administrative law judge 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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JUDITH S. BOGGS
Administrative Appeals Judge