

BRB No. 06-0220 BLA

DONALD HOLBROOK )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 APOGEE COAL COMPANY/ARCH OF ) DATE ISSUED: 09/18/2006  
 KENTUCKY, INCORPORATED )  
 )  
 and )  
 )  
 UNDERWRITERS' SAFETY AND )  
 CLAIMS )  
 )  
 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-Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Mark L. Ford (Ford Law Offices), Harlan, Kentucky, for claimant.

Ralph D. Carter (Barret, Haynes, May, Carter & Davidson, P.S.C.), Hazard, Kentucky, for employer.

Before: McGRANERY, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denial of Benefits (2003-BLA-6539) of Administrative Law Judge Thomas F. Phalen, Jr. 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).<sup>1</sup> The administrative law judge found that the record supported the parties' stipulation of a coal mine employment history of at least eighteen years and that claimant had established an applicable condition of entitlement by establishing the existence of a totally disabling respiratory impairment. 20 C.F.R. §§718.204(b)(2); 725.309(d). Considering all of the evidence of record, however the administrative law judge found that claimant was unable to establish the existence of pneumoconiosis or that his totally disabling respiratory impairment was due to pneumoconiosis; *i.e.*, disability causation. 20 C.F.R. §§718.202(a)(1)-(4), 718.204(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge should have found the existence of legal pneumoconiosis and disability causation established based on the opinion of Dr. Baker.<sup>2</sup> Employer, in response, urges that the administrative law judge's denial of benefits be affirmed. The Director has not filed a brief 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. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Claimant specifically contends that the administrative law judge erred in failing to credit Dr. Baker's opinion on causation, *i.e.*, that claimant's pulmonary impairment was

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<sup>1</sup> Claimant initially filed a claim on November 3, 1997 which was finally denied by the district director on June 10, 1998 as claimant failed to establish any of the elements of entitlement. Director's Exhibit 1. No further action was taken until the filing of the instant claim on December 14, 2001. Director's Exhibit 3.

<sup>2</sup> Claimant does not specifically challenge the administrative law judge's finding that the existence of pneumoconiosis was not established by x-ray, biopsy, the presumptions contained at Section 718.202(a)(3). 20 C.F.R. §718.202(a)(1)-(3). These findings are, accordingly, affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

due to both coal dust exposure and cigarette smoking, Director's Exhibit 8. Claimant argues that the administrative law judge's reason for according the opinion little weight, *i.e.*, that "Dr. Baker failed to provide any rationale for his opinion that claimant's COPD was wholly not attributable to tobacco smoking," Decision and Order at 21, appears to be based on the erroneous impression that the standard for establishing the existence of legal pneumoconiosis and disability causation is "whether one has disproven that smoking is the exclusive cause of breathing dysfunction," thereby "implying that there's a presumption that COPD is wholly attributable to smoking." Decision and Order at 5; Claimant's Brief at 5.

In addressing the opinion of Dr. Baker, as to the existence of legal pneumoconiosis, the administrative law judge found that Dr. Baker diagnosed COPD, mild hypoxemia, and chronic bronchitis caused by both cigarette smoking and coal dust exposure. Decision and Order at 21; Director's Exhibit 8. The administrative law judge found, however, that because Dr. Baker "failed to provide any rationale for his opinion that claimant's COPD was not wholly attributable to tobacco smoking," Decision and Order at 21, the doctor's opinion was neither well-reasoned nor documented, and his opinion did not therefore constitute a reasoned medical opinion for the purposes of diagnosing legal pneumoconiosis. Hence, the administrative law judge accorded the opinion little weight. Decision and Order at 21.

The administrative law judge, as fact-finder, reasonably determined that the doctor's opinion was neither well-reasoned nor well-documented because Dr. Baker provided no explanation for his conclusion that coal dust exposure contributed to claimant's pulmonary disease. *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)(claimant bears the burden of establishing the elements of entitlement); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-623 (6th Cir. 2003)(physicians' opinions accorded weight based on their power to persuade); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983)(determination as to whether a physician's report is sufficiently reasoned and documented is a credibility matter for the administrative law judge); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*)(it is within the administrative law judge's discretion to determine whether a physician's opinion is reasoned, and the administrative law judge may reject the opinion of a doctor who failed to adequately explain his diagnosis).

Instead, the administrative law judge permissibly credited the opinions of Drs. Lockey and Jarboe, who found that claimant did not suffer from the existence of pneumoconiosis, as the administrative law judge found them to be well-reasoned and well-documented, *i.e.*, the physicians provided detailed explanations as to why they believed claimant's chronic obstructive pulmonary disease was solely due to his long

history of cigarette smoking and not the result of coal dust exposure, and their opinions were bolstered by the physicians' advanced qualifications, *i.e.*, both doctors were internists and pulmonologists. *King v. Consolidation Coal Co.*, 8 BLR 1-139, 1-141 (1985) (an administrative law judge may properly give greater weight to the opinions of physicians who demonstrated greater expertise); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46, 1-47 (1985). Accordingly, we affirm the administrative law judge's finding that claimant failed to carry his burden of establishing the existence of legal pneumoconiosis. Because we affirm the administrative law judge's finding that the existence of neither clinical nor legal pneumoconiosis was established, we likewise reject claimant's argument that the administrative law judge erred in finding claimant failed to establish disability causation pursuant to 20 C.F.R. §718.204(c).

Accordingly, the administrative law judge's Decision and Order-Denial of Benefits is affirmed.

SO ORDERED.

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge