BRB No. 10-0698 BLA

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| MICHAEL HALE | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| LAMPLIGHTER MINING COMPANY, INCORPORATED | ) | |
| | ) | |
| and | ) | |
| | ) | DATE ISSUED: 09/28/2011 |
| OLD REPUBLIC INSURANCE 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 Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

John Earl Hunt, Allen, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (09-BLA-5427) of Administrative Law Judge Pamela Lakes Wood rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C.

§§921(c)(4) and 932(*l*)) (the Act). The administrative law judge credited claimant with 13.9 years of coal mine employment,[1] and accepted employer's concession that claimant is totally disabled by a respiratory or pulmonary impairment, pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge further found that, because claimant established fewer than fifteen years of coal mine employment, he could not invoke the rebuttable presumption of total disability due to pneumoconiosis contained in 30 U.S.C. §921(c)(4). Finally, the administrative law judge found that the medical evidence did not establish the existence of either clinical or legal pneumoconiosis[2] pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, she denied benefits.

On appeal, claimant asserts that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[3] Employer/carrier responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, 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

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[1] As claimant was last employed in the coal mining industry in Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibits 6-8.

[2] "Clinical pneumoconiosis" is defined as "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

[3] Claimant does not challenge the administrative law judge's finding of 13.9 years of coal mine employment, or her finding that the evidence did not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3). Thus, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Because claimant did not establish at least fifteen years of coal mine employment, the administrative law judge correctly found that a recent amendment to the Act, which reinstated a rebuttable presumption of total disability due to pneumoconiosis, did not affect this case. *See* Pub. L. No. 111-148, §1556(a), 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §921(c)(4)); Decision and Order at 13-14.

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

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*).

Pursuant to Section 718.202(a)(4), the administrative law judge considered five medical opinions regarding whether claimant suffers from legal pneumoconiosis. Claimant's treating physicians, Drs. Sikder and Triplett, diagnosed him with chronic obstructive pulmonary disease (COPD), that was significantly related to, or aggravated by, coal mine dust exposure. Claimant's Exhibits 1, 2. Dr. Ammisetty examined claimant on behalf of the Department of Labor, and diagnosed chronic bronchitis, asthma, and COPD, all of which were "most likely" due to smoking, but also exacerbated by coal mine dust exposure. Director's Exhibits 12, 15, 19. In contrast, Drs. Jarboe and Rosenberg opined that claimant does not have pneumoconiosis, but suffers from COPD, emphysema, and chronic bronchitis, all of which are due solely to smoking. Director's Exhibit 18; Employer's Exhibits 1-3.

After discussing the physicians' respective credentials,[4] the administrative law judge found that Drs. Ammisetty, Sikder, and Triplett did not adequately explain their opinions, because they did not set forth "the clinical basis upon which each doctor determined that a combination of the two causes of cigarette smoking and coal mine dust exposure, as opposed to a single cause, contributed to [c]laimant's lung disease." Decision and Order at 17. Therefore, the administrative law judge determined that the medical opinions of Drs. Ammisetty, Sikder, and Triplett were "conclusory" regarding the existence of legal pneumoconiosis. *Id*. In contrast, she found that the contrary opinions of Drs. Jarboe and Rosenberg were better reasoned and documented, and "more

[4] The administrative law judge noted that Drs. Ammisetty, Jarboe, and Rosenberg are Board-certified in Pulmonary Medicine, and that the credentials of Drs. Sikder and Triplett are not contained in the record. Decision and Order at 16. Finding that "[B]oard certification in [P]ulmonary [M]edicine is particularly relevant . . . where a diagnosis of pneumoconiosis is at issue," the administrative law judge stated that she would "consider the additional credential when weighing the medical reports." *Id*. Claimant does not challenge the administrative law judge's determination regarding the physicians' credentials. *See Skrack*, 6 BLR at 1-711.

convincing." *Id*. Therefore, the administrative law judge found that the medical opinion evidence did not establish the existence of legal pneumoconiosis.

Claimant argues that the administrative law judge erred because she failed to recognize that "the opinions of Drs. Triplett and Sikder, both of [whom] are treating physicians, are entitled to more weight" than those of employer's physicians. Claimant's Brief at 9. This assertion lacks merit, because, "[I]n black lung litigation, the opinions of treating physicians get the deference they deserve based on their power to persuade." *Eastover Mining Co. v. Williams*, 338 F.3d 501, 512-13, 22 BLR 2-625, 2-647 (6th Cir. 2003); *see also* 20 C.F.R. §718.104(d)(5)(requiring the factfinder to consider "the credibility of the [treating] physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole"). Here, the administrative law judge considered Dr. Triplett's and Dr. Sikder's status as treating physicians, but permissibly declined to defer to their opinions, because she found that they were not adequately explained. *See* 20 C.F.R. §718.104(d)(5); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). Substantial evidence supports the administrative law judge's credibility determination. Therefore, we reject claimant's argument that the administrative law judge erred in discounting the opinions of Drs. Triplett and Sikder.

Claimant argues further that the administrative law judge "did not consider all the evidence of record," and he notes that Dr. Ammisetty, who "is . . . [B]oard-certified in [P]ulmonary [M]edicine," diagnosed him with pneumoconiosis. Claimant's Brief at 10. Contrary to claimant's contention, the administrative law judge considered Dr. Ammisetty's medical opinion, along with his credentials, Decision and Order at 7, 16-17, and permissibly found that Dr. Ammisetty did not adequately explain the basis for his opinion. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155. Therefore, we reject claimant's argument, and affirm the administrative law judge's finding that the medical opinion evidence did not establish the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4).

Because claimant did not establish the existence of pneumoconiosis, a necessary element of entitlement in a miner's claim under 20 C.F.R. Part 718, we affirm the administrative law judge's denial of benefits. *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

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