BRB No. 97-1768 BLA

DEWEY HOLLIDAY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SOUTHERN APPALACHIAN COAL CO.	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Samuel J. Smith, Administrative Law Judge, United States Department of Labor.

David L. Yaussey (Robinson & McElwee), Charleston, West Virginia, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (96-BLA-442) of Administrative Law Judge Samuel J. Smith awarding 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-five and one-half years of coal mine employment, and based on the filing date, applied the regulations at 20 C.F.R. Part 718. The administrative law judge found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.203(b). The administrative law judge also found the evidence of record sufficient to demonstrate the presence of a totally disabling respiratory impairment due to pneumoconiosis at 20 C.F.R. §718.204(c), (b). Accordingly, benefits were awarded. On appeal, employer challenges the findings of the administrative law judge at 20 C.F.R. §§718.202(a)(1), (4), 718.204(c)(4) and 718.204(b). Claimant is

not participating in this appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not respond 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 by 30 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*).

[1] We affirm the findings of the administrative law judge on the length of coal mine employment, on the designation of employer as the responsible operator, on dependency, and at 20 C.F.R. §§718.202(a)(2), (3) and 718.204(c)(1)-(3), as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Furthermore, we note that employer conceded 20 C.F.R. §718.203(b) at the hearing. *See* Hearing Transcript at 12.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. At Section 718.202(a)(4), claimant meets his burden of proof if he establishes the existence of legal pneumoconiosis. *See* 20 C.F.R. §§718.202(a)(4), 718.201. In the instant case, the administrative law judge acted within his discretion in finding that the medical opinions of Drs. Rasmussen and Forehand satisfied the regulatory definition of legal pneumoconiosis and that these opinions were reasoned, documented, and supported by their underlying documentation.[2] *See Id.; Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge properly found the medical opinion of Dr. Rasmussen reasoned in light of the explanations provided by the physician for relating claimant's chronic bronchitis to both his smoking and twenty-five years of coal dust exposure. *See Fields, supra*. The administrative law judge also properly found the report of Dr. Forehand reasoned based on the physician's detailed explanations for his diagnosis of a work limiting respiratory impairment and coal workers' pneumoconiosis. *Id*.

The administrative law judge properly accorded less weight to the opinions of Drs. Altmeyer and Zaldivar because the physicians failed to discuss their qualifying blood gas studies. *See Sheranko v. Jones and Laughlin Steel Corp.*, 6 BLR 1-797 (1984). Likewise, the administrative law judge permissibly found that the conclusions of Drs. Zaldivar and Fino, that obstructive pulmonary impairments cannot cause coal workers' pneumoconiosis, were based on an assumption which has been legally discredited. *See Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995). As the administrative law judge has provided legally sufficient reasons for his treatment of the medical opinion evidence concerning the presence of legal pneumoconiosis, we affirm his decision to accord determinative weight to the medical opinions of Drs. Rasmussen and Forehand. We, therefore, affirm the finding of the administrative law judge that the medical opinion evidence was sufficient to support claimant's burden of proving the existence of

[2] The opinions of Drs. Rasmussen and Forehand are based on physical examination, objective tests, and medical and employment histories. Both physicians based their diagnosis of a respiratory impairment on qualifying blood gas study tests which revealed either a moderate impairment in oxygen transfer or moderate hypoxemia and non-qualifying pulmonary function studies which showed minimal, irreversible obstructive ventilatory impairment or evidence of hyperinflation and air trapping. *See* Director's Exhibits 10, 12, 43; *Smith v. Director, OWCP*, 8 BLR 1-258 (1985); *Marsiglio v. Director, OWCP*, 8 BLR 1-190 (1985); *Fuller v. Gilbraltor Coal Corp.*, 6 BLR 1-1291 (1984).

pneumoconiosis at 20 C.F.R. §§718.202(a)(4), 718.201 as it supported by substantial evidence and is in accordance with law.[3]

At 20 C.F.R. §718.204(c)(4), the administrative law judge permissibly concluded, based on claimant's credible testimony, that claimant's last coal mine employment was that of an electrician/mechanic and that in light of the exertional requirements of this position, claimant's job required heavy work on a daily basis. *See* Decision and Order at 34. The administrative law judge then properly concluded that Drs. Rasmussen and Forehand understood the exertional requirements of claimant's usual coal mine employment and properly found that their medical opinions on the presence of a totally disabling respiratory impairment were reasoned. *See Fields, supra*; *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986), *aff'd on recon.* 9 BLR 1-104 (1986)(*en banc*). Additionally, the administrative law judge acted within his discretion when he rejected the opinion of Dr. Zaldivar that claimant did not have a respiratory impairment because the physician did not discuss his qualifying blood gas study or the qualifying blood studies of Drs. Rasmussen and Forehand. *See Lucostic, supra*. The administrative law judge also properly found the medical opinions of Drs. Fino and Altmeyer unreasoned because neither physician discussed the exertional requirements of claimant's usual coal mine employment and the qualifying blood gas studies of record. *Fields, supra*; *Budash, supra*. Finally, the administrative law judge properly weighed the probative and contrary probative evidence concerning the presence of a totally disabling respiratory impairment at Section 718.204(c)(1)-(4) and acted within his discretion when he concluded that the evidence was sufficient to support claimant's burden of proof. *See Fields, supra*; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986). We, therefore, affirm the findings of the administrative law judge that the evidence of record was sufficient to demonstrate the presence of a totally disabling respiratory impairment at Section 718.204(c) as it is supported by substantial evidence and is in accordance with law.

Lastly, the administrative law judge acted within his discretion when he declined to accord any evidentiary weight to the opinions of Drs. Zaldivar, Fino and Altmeyer at Section 718.204(b) because the physicians opined that the inhalation of coal dust cannot cause an obstructive pulmonary impairment and as they did not

[3] As we affirm the finding of the administrative law judge at 20 C.F.R. §718.202(a)(4), we need not address employer's arguments at 20 C.F.R. §718.202(a)(1).

diagnose coal workers' pneumoconiosis. *See Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 19 BLR 2-70, 2-82 (4th Cir. 1995). The administrative law judge properly concluded that the medical opinions of Drs. Rasmussen and Forehand were sufficient to meet claimant's burden of proving that his pneumoconiosis was a contributing cause of his totally disabling respiratory impairment. *See Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir 1990); *Robinson v. Pickands Mathur & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). We, therefore, affirm the finding of the administrative law that the evidence of record was sufficient to meet claimant's burden of proof at Section 718.204(b) as it is supported by substantial evidence and is in accordance with law.

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge