BRB No. 98-1617 BLA

ROY HENRY MURPHY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
R & S COAL COMPANY, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
WEST VIRGINIA COAL-WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

Stephen E. Crist (West Virginia Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (98-BLA-00052) of Administrative Law Judge Daniel F. Sutton 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 the miner with at least ten years of coal mine employment based on a stipulation by the parties and adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was sufficient to establish total disability due to pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203(b) and 718.204(b), (c)(1), (4). Accordingly, benefits were awarded. On appeal, employer challenges the administrative law judge's evaluation of the medical opinion evidence of record to find that claimant established the existence of pneumoconiosis, total disability and disability causation. *See* 20 C.F.R. §§718.202(a)(4) and 718.204(b), (c)(4). Claimant responds, urging affirmance of the award 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 the 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out to coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any 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*).

Employer initially contends that the administrative law judge erred in finding total disability established pursuant to Section 718.204(c)(4) since he failed to consider the

[1] We affirm the administrative law judge's finding that the x-ray evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) as this finding is unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). We therefore deem harmless, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), any error the administrative law judge may have made in his consideration of Dr. Renn's opinion pursuant to 20 C.F.R. §718.204(a)(4).

superior credentials of Drs. Renn, Weiland and Vasudevan. In this case, the administrative law judge specifically listed the credentials and qualifications of Drs. Renn, Weiland and Vasudevan in his summary of the medical opinion evidence. Decision and Order at 7-8. In discussing these opinions in his consideration of the issue of total disability at Section 718.204(c)(4), the administrative law judge initially noted that Dr. Vasudevan found a moderate impairment, but did not discuss the severity of the impairment in terms of claimant's ability to do his usual coal mine employment. Decision and Order at 11. The administrative law judge also noted that Dr. Renn stated claimant's impairment would preclude very heavy manual labor for extended periods. *Id*. The administrative law judge then discussed the opinions that specifically addressed whether claimant could perform his usual coal mine employment and noted that Dr. Rasmussen concluded claimant's impairment would prevent performance of usual coal mine employment, but that Dr. Weiland found claimant's impairment was not severe enough to disable him. *Id*. Thus, on the issue of total disability, employer's argument regarding the administrative law judge's failure to consider the credentials of Drs. Renn and Vasudevan appears misplaced as the administrative law judge did note their credentials in the summary of the medical evidence, and gave rational reasons for his weighing of the opinions at Section 718.204(c)(4). Moreover, the administrative law judge reasonably credited Dr. Rasmussen over Dr. Weiland since Dr. Rasmussen specifically discussed the exertional demands of claimant's duties and explained how the objective evidence showed why claimant could not meet those demands while Dr. Weiland's opinion was conclusory. Decision and Order at 12. The administrative law judge also gave Dr. Rasmussen's opinion greater weight since he was an examining physician and his opinion was more consistent with the findings by the other physicians. We therefore affirm the administrative law judge's finding that total disability was established pursuant to Section 718.204(c)(4). *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

Furthermore, the administrative law judge correctly considered the entirety of the relevant medical opinion evidence in conjunction with the pulmonary function study evidence, blood gas study evidence and the exertional requirements of claimant's usual coal mine employment and acted within his discretion in concluding that claimant established that he suffered from a totally disabling respiratory impairment pursuant to Section 718.204(c). *Shedlock v. Bethlehem Steel Corp.*, 9 BLR 1-195 (1986), *aff'd on recon. en banc*, 9 BLR 1-236 (1987); Decision and Order at 12. As the administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark*, *supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record was sufficient to establish total disability pursuant to Section 718.204(c). *Shedlock*, *supra*.

Employer also contends that the administrative law judge erred in his weighing of the medical opinions of Drs. Renn and Weiland in determining whether total disability due to pneumoconiosis was established pursuant to Section 718.204(b). Drs. Renn, Vasudevan and Weiland found that claimant's impairment was not due to coal workers' pneumoconiosis whereas Dr. Rasmussen found that it was, in part. The administrative law judge found that claimant established he was totally disabled due to pneumoconiosis by relying on the opinion of Dr. Rasmussen. Decision and Order at 12. The administrative law judge found that the opinions of Drs. Renn, Vasudevan and Weiland were "entitled to little if any weight" because these physicians did not diagnose pneumoconiosis, citing *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995). Decision and Order at 12. After consideration of the administrative law judge's findings we vacate the administrative law judge's Section 718.204(b) finding. While an administrative law judge may discredit an opinion regarding the cause of total disability where it is based on the erroneous premise that the miner did not have pneumoconiosis, *see Grigg v. Director, OWCP,* 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986), the administrative law judge's reliance on this principle here appears to be irrational with regard to the opinions of Dr. Renn and Weiland, *see Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985), because these physicians stated that even assuming claimant had simple coal workers' pneumoconiosis, it did not contribute to any respiratory impairment. *See Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995); *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995). Accordingly, we remand this case for the administrative law judge to reconsider all of the relevant evidence pursuant to Section 718.204(b). *See Hobbs*, *supra*; *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). In evaluating the medical opinion evidence on remand, the administrative law judge should assess "the qualifications of the respective physicians, the explanation of their medical opinions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses." *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997).

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed in part, vacated in part and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON
Administrative Appeals Judge