BRB No. 91-0857 BLA

WILLIAM B. HUGHES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	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 Robert G. Mahony, Administrative Law Judge, United States Department of Labor.

Robert F. Cohen, Jr. (Cohen, Abate & Cohen), Fairmont, West Virginia, for claimant.

William S. Mattingly (Jackson & Kelly), Morgantown, West Virginia, for employer.

Before: STAGE, Chief Administrative Appeals Judge, DOLDER, Administrative Appeals Judge, and LIPSON, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Decision and Order (89-BLA-893) of Administrative Law Judge Robert G. Mahony 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 found, and

the parties stipulated to, forty-one years of coal mine employment.

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (1988).

See Decision and Order at 2; Hearing Transcript at 23. Considering entitlement pursuant to the provisions of 20 C.F.R. Part 718, the administrative law judge concluded that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4), and that the pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). See Decision and Order at 5, 7. The administrative law judge further found that the evidence of record was sufficient to establish that claimant was totally disabled and that his disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) and (c). See Decision and Order at 8-9. Accordingly, benefits were awarded. On appeal, employer contends that the administrative law judge erred in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(1) and (a)(4), in finding that the pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(b), and in determining that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204. Claimant responds, asserting that substantial evidence supports the administrative law judge's Decision and Order, and disputing all of employer's contentions on appeal. The Director, Office of

Workers' Compensation Programs, filed a letter indicating that he would not respond to 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 supported by substantial evidence, is rational, and is in accordance with law. 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 establish 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 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).

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. Initially, employer's contention that the administrative law judge's Decision and Order failed to comport with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), is without

merit.[1] The administrative law judge fully discussed the relevant medical evidence and his reasoning is readily ascertainable from his discussion of the evidence.

[1]The Administrative Procedure Act requires each adjudicatory decision to include a statement of "findings and conclusions, and the reasons or basis therefore, on all material issues of fact, law or discretion presented on the record...." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

In finding that the medical opinions of record established both the existence of pneumoconiosis pursuant to Section 718.202(a)(4), and that claimant's total disability[2] was due to pneumoconiosis pursuant to Section 718.204(b), the administrative law judge properly reviewed the physicians' conclusions and the underlying bases therefor, noted that only one examining physician and two reviewing physicians found no pneumoconiosis and no relationship between claimant's disability and his coal dust exposure,[3] and permissibly relied on the overwhelming numerical preponderance of medical opinions which diagnosed pneumoconiosis and found that it was a contributing cause of claimant's totally disabling respiratory impairment.[4] Decision and Order at 5-7, 9; see Anderson v.

[2]We note that employer concedes that claimant is suffering from a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(c). See Employer's Brief at 24.

[3] Employer notes that the administrative law judge, in summarizing the medical opinions of record, found that Drs. Renn, Fino and Rasmussen were all Board-certified internists and pulmonary disease specialists. Decision and Order at 6, 7. Employer asserts that although Dr. Rasmussen has extensive experience in performing pulmonary evaluations, he is not certified in the subspecialty of pulmonary diseases, whereas Drs. Renn and Fino are, and Dr. Morgan has obtained the British equivalent, thus the administrative law judge erred in failing to acknowledge the greater credentials of Drs. Morgan, Renn and Fino. Inasmuch as the administrative law judge was not persuaded by the opinions of Drs. Morgan, Renn and Fino, however, and as he is not required to defer to the opinions of physicians with superior qualifications, see DeFore v. Alabama By-Products Corp., 12 BLR 1-27 (1988), any error is harmless. See Larioni v. Director, OWCP, 6 BLR 1-1276 (1984).

[4] Contrary to employer's arguments, the administrative law judge determined that the physicians of the West Virginia Occupational Pneumoconiosis Board based their diagnosis of occupational pneumoconiosis causing a 40 percent impairment upon

Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Perry, supra; Piccin v. Director, OWCP, 6 BLR 1-616 (1983); see also Robinson v. Pickands Mather & Co., 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). 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), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See Anderson, supra. We, therefore, affirm the administrative law judge's findings pursuant to Sections 718.202(a)(4) and 718.204(b), as supported by substantial evidence.[5]

Moreover, we reject employer's argument that the opinions of Drs. Renn,

---

the results of x-rays, objective tests and physical examination findings. Decision and Order at 5. Consequently, the administrative law judge could reasonably find that these opinions were reasoned and documented on the issues of the existence of pneumoconiosis, etiology and causation, and employer has conceded that claimant is totally disabled. See Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987).

[5]Since we have affirmed the administrative law judge's finding that the medical opinion evidence of record is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), we need not address employer's contentions concerning 20 C.F.R. §718.202(a)(1). See Dixon v. North Camp Coal Co., 8 BLR 1-344 (1985).

Morgan and Fino, as well as the shape and location of claimant's radiographic opacities, establish rebuttal of the presumption that claimant's pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(b). Drs. Renn, Morgan and Fino did not diagnose pneumoconiosis and consequently rendered no opinions concerning the etiology thereof. See Director's Exhibit 25; Employer's Exhibits 6, 8, 12, 14, 17. Further, employer's assertion that the shape and lung field location of claimant's radiographic opacities are inconsistent with coal workers' pneumoconiosis finds no support in the regulations or case law. See 20 C.F.R. §§718.102, 718.202. Consequently, we affirm the administrative law judge's finding that the record contains no evidence sufficient to establish rebuttal of the presumption pursuant to Section 718.203(b), as it is supported by substantial evidence and in accordance with law.

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

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

SHELDON R. LIPSON
Administrative Law Judge