BRB No. 94-0173 BLA

LEO V. VIOLA, SR. )
)
Claimant-Petitioner )
)
v. )
) DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS' )
COMPENSATION PROGRAMS, UNITED )
STATES DEPARTMENT OF LABOR )
)
Respondent ) DECISION and ORDER

Appeal of the Decision and Order of Frank D. Marden, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Before: , and , Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order (92-BLA-1733) of Administrative Law Judge Frank D. Marden denying 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 that claimant established thirteen years of qualifying coal mine employment and failed to

[1]Claimant is Leo V. Viola, Sr., the miner, who filed a claim for benefits on December 20, 1991. Director's Exhibit 1.

establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and (4).[2] No response brief has been received from the Director, Office of Workers' Compensation Programs (the Director).

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant first contends that the administrative law judge mischaracterized the x-ray evidence of record pursuant to Section 718.202(a)(1). Claimant's Brief at 4. Specifically, claimant contends that the administrative law judge erred in stating that Dr. Smith was merely a B-reader instead both a B-reader and Board Certified Radiologist. Claimant's Brief at 4. This contention has merit. In his Decision and

[2]We affirm the administrative law judge's findings as to the length of claimant's coal mine employment and pursuant to Section 718.202(a)(2) and (3) as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Order, the administrative law judge stated that he affords the greatest weight to the radiographic opinions of the B-readers who are also board certified. Decision and Order at 5. The administrative law judge then found that Dr. Smith is only a B-reader and did not afford his interpretation equal weight. Decision and Order at 5. However, the record contains Dr. Smith's curriculum vitae which states that Dr. Smith became board certified in 1972. Claimant's Exhibit 4. As the administrative law judge mistakenly afforded Dr. Smith's positive interpretation less weight and found the x-ray evidence equally split both for and against the existence of pneumoconiosis, D&O at 5; *see Tackett v. Director, OWCP*, 7 BLR 1-703 (1985), we vacate the administrative law judge's finding pursuant to Section 718.202(a)(1) and remand the case for further consideration.

Claimant next contends that the administrative law judge erred in stating that Dr. Cable personally interpreted an x-ray as negative for the existence of pneumoconiosis. Claimant's Brief at 4. Upon listing the x-ray evidence of record, the administrative law judge included a negative interpretation by Dr. Cable on March 19, 1992 of an x-ray dated January 15, 1992. Decision and Order at 4; Director's Exhibit 13. The interpretation in question is found in a Department of Labor form medical report completed by Dr. Cable on March 19, 1992. Director's Exhibit 13. In the section asking for a summary of the diagnostic test results that the physician reviewed and relied upon in reaching his conclusions, Dr. Cable placed a check mark next to chest x-ray, indicated that the x-ray was taken on January 15,

1992 and summarized the results as showing mild prominence of the L hilum. Director's Exhibit 13.

Claimant contends that the record contains no evidence indicating that Dr. Cable actually interpreted this x-ray instead of merely reviewing Dr. Conrad's interpretation of the same x-ray. Claimant's Brief at 4. While the record does not contain an x-ray interpretation form filled out by Dr. Cable, it appears that Dr. Cable interpreted the film himself because his interpretation, which does not mention pneumoconiosis, is different from Dr. Conrad's opinion, which indicates category 1/1 pneumoconiosis. Director's Exhibit 13, 17. Further, it is within the administrative law judge's discretion to infer that Dr. Cable actually interpreted the x-ray. *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). Thus, we reject claimant's contentions regarding Dr. Cable's x-ray interpretation.

Claimant also contends that, because the administrative law judge concluded that Dr. Cable actually interpreted the January 15, 1992 x-ray, he should also have counted the interpretations reviewed by Drs. Kraynak and Ahluwalia as separate interpretations. Claimant's Brief at 6. This contention is without merit, however, as both Drs. Kraynak and Ahluwalia indicated in their medical opinions that they merely reviewed the interpretations made by other physicians. Director's Exhibit 26, Claimant's Exhibits 3, 6.

Claimant next contends that because there are five physicians who interpreted x-rays as positive for pneumoconiosis and only one doctor who interpreted three x-

rays as negative for pneumoconiosis, the administrative law judge erred in finding that he was "truly in doubt" as to the existence of pneumoconiosis. Claimant's Brief at 5. We reject this contention because it is within the administrative law judge's discretion to assess the evidence of record, assign it the appropriate weight, and determine whether claimant has met his burden of proof. *See Lafferty*, *supra; Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Claimant next contends that the administrative law judge erred in weighing the medical opinions of Drs. Kraynak and DiNicola pursuant to Section 718.202(a)(4). Claimant's Brief at 7. In his Decision and Order, the administrative law judge afforded Dr. Kraynak's opinion that claimant has pneumoconiosis less weight because he found that it was unreliable and not well reasoned, documented nor supported. Decision and Order at 8. In his brief, claimant contends that the administrative law judge erred in rejecting Dr. Kraynak's opinion because he relied on an invalid pulmonary function study, only examined claimant on one occasion and because he did not explain the relation between claimant's complaint's and his diagnosis. Claimant's Brief at 8.

Before finding the medical reports of record sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4), the administrative law judge, as fact-finder, must determine if the reports are reasoned and documented. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal*

*Co.*, 12 BLR 1-149 (1989); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985). In making this finding, the administrative law judge noted that the pulmonary function study upon which Dr. Kraynak relied had been invalidated by Dr. Spagnolo. Decision and Order at 8; Director's Exhibit 25. The administrative law judge permissibly found that Dr. Spagnolo's opinion regarding the validity of the pulmonary function study was entitled to greater weight than Dr. Kraynak's opinion on the basis of Dr. Spagnolo's superior credentials. Decision and Order at 8; *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990).

The administrative law judge then noted that while Dr. Kraynak relied upon objective tests performed by Dr. Cable, he permissibly questioned Dr. Kraynak's conclusions because they were contrary to those in Dr. Cable's report which he found "was more well reasoned than Dr. Kraynak's". Decision and Order at 8; *see Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). The administrative law judge further noted that Dr. Kraynak did not explain how he relied on claimant's complaints in arriving at his medical opinion and how these complaints were result of coal workers' pneumoconiosis arising from coal mine employment. Decision and Order at 8; *see Clark*, *supra*. After making the above findings regarding Dr. Kraynak's opinion, the administrative law judge permissibly afforded his opinion less weight as it is unreliable and not well reasoned or documented.

Decision and Order at 8; *see Clark*, *supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Hutchens*, *supra*; *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, we reject claimant's arguments regarding the weighing of Dr. Kraynak's opinion.

Claimant next contends that the administrative law judge erred in weighing Dr. DiNicola's opinion. Claimant's Brief at 9. Specifically, claimant contends that the administrative law judge erred in rejecting Dr. DiNicola's opinion although it is a detailed, comprehensive, "well-reasoned medical judgement". Claimant's Brief at 10. This contention is without merit, however, because the administrative law judge did not reject Dr. DiNicola's opinion. The administrative law judge credited Dr. DiNicola's opinion, but permissibly afforded it less weight than the Dr. Cable's opinion because of his superior qualifications and because his opinion, as well as Dr. Ahluwhalia's opinion, is better supported by the objective evidence of record. Decision and Order at 10; Director's Exhibits 13, 26; *see Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Pastva v. The Youhiogheny and Ohio Coal Co.*, 7 BLR 1-829 (1985). Thus, we reject claimant's arguments regarding the weighing of Dr. DiNicola's opinion and affirm the administrative law judge's finding pursuant to Section 718.202(a)(4).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in-part, vacated in-part, and remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

Administrative Appeals Judge

Administrative Appeals Judge

Administrative Appeals Judge