

BRB No. 94-0766 BLA

TOMMY R. HAGERMAN)

)
Claimant-Respondent)

)
v.)

)
SEA "B" MINING COMPANY)

)
Employer-Petitioner)

DATE ISSUED:

)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

)
Respondent) DECISION and ORDER

Appeal of the Decision and Order of Edith Barnett, Administrative Law Judge, United States Department of Labor.

Timothy W. Gresham (Penn, Stuart, Eskridge & Jones), Abingdon, Virginia, for employer.

Jill M. Otte (Thomas S. Williamson, Jr., Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (91-BLA-1740) of Administrative

Law Judge Edith Barnett 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). Initially, Administrative Law Judge John H. Bedford found that claimant¹ failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant requested modification of the denial of benefits on July 10, 1990. Director's Exhibit 56. Following the denial of modification by the district director, Director's Exhibit 61, and a formal hearing, Judge Barnett credited claimant with twenty-three and three-quarter years of qualifying coal mine employment and determined that his usual coal mine employment required heavy manual labor. The administrative law judge found the evidence sufficient to establish total respiratory disability due to pneumoconiosis arising from coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4); 718.203(b); 718.204(b), (c)(4). The administrative law judge then concluded that claimant established a mistake in a determination of fact and granted claimant's request for modification pursuant to 20 C.F.R. §725.310. Accordingly, benefits were awarded.

¹Claimant is Tommy R. Hagerman, the miner, who filed an application for benefits on March 13, 1986. Director's Exhibit 1.

On appeal, employer contends that the administrative law judge erred in weighing the evidence pursuant to Sections 718.202(a) and 718.204 and in finding that claimant established a mistake in a determination of fact pursuant to Section 725.310. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to affirm the administrative law judge's analysis of the parties' respective burdens of proof at Section 718.204(b).² Claimant has not responded to this appeal.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer first contends that the administrative law judge erroneously relied upon the "true doubt" rule in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(1). Employer's Brief at 3. The administrative law judge found that "this is an appropriate case for application" of the true doubt rule. Decision and Order at 11-12. Subsequently, the United States Supreme Court

²We affirm the administrative law judge's findings regarding the length and nature of claimant's coal mine employment, entitlement date, and pursuant to Section 718.203(b) as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

invalidated the true doubt rule in *Director, OWCP v. Greenwich Collieries [Ondecko]*, U.S. , 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub. nom., Greenwich v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3rd Cir. 1993). Thus, we vacate the administrative law judge's finding pursuant to Section 718.202(a)(1).

Pursuant to Section 718.202(a)(4), employer contends that the administrative law judge erred in rejecting the opinions of Drs. Sargent and Fino, and applied different standards when weighing the opinions of employer's physicians. Employer's Brief at 4-7. The administrative law judge found the opinions of Drs. Rasmussen, Ranavaya, and Jose, all of whom diagnosed pneumoconiosis, to be "better reasoned and therefore more persuasive" than the opinions of Drs. Sargent and Fino, both of whom diagnosed no pneumoconiosis. Decision and Order at 12; Director's Exhibits 36, 38, 41, 45, 56; Claimant's Exhibit 1; Employer's Exhibits 4, 5, 11. The administrative law judge further found that Dr. Sargent's opinions "are couched in equivocal language and are based on evidence which is also equivocal." Decision and Order at 7. The administrative law judge found Dr. Fino's consultative opinion to be "limited probative value because of its conclusory nature and failure to fully discuss and reconcile the contradictory medical evidence in the record." Decision and Order at 10.

Inasmuch as it is within the administrative law judge's discretion to determine whether a physician's opinion is sufficiently reasoned, *see 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), and to weigh the evidence and draw her own conclusions and inferences, see *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989), the administrative law judge permissibly accorded the most weight to the opinions of Drs. Rasmussen, Ranavaya, and Jose as better reasoned. Decision and Order at 12; Director's Exhibits 41, 45, 56; Claimant's Exhibit 1; see *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge also permissibly accorded less weight to Dr. Sargent's opinions as equivocal and to Dr. Fino's opinion as not fully explained. Decision and Order at 12; Director's Exhibits 36, 38; see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986); see also *Lucostic, supra*. Thus, we reject employer's arguments and affirm the administrative law judge's findings pursuant to Section 718.202(a)(4).

Pursuant to Section 718.204(c)(4), employer first contends that the administrative law judge failed to make a specific finding of a totally disabling respiratory impairment, citing *Beatty v. Danri Corp.*, 16 BLR 1-11 (1991), *aff'd*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995). Employer's Brief at 7-8. Employer also contends that the opinions of Drs. Rasmussen and Ranavaya do not support a finding of total respiratory impairment because neither physician indicated that claimant's respiratory condition prevents him from performing his employment. Employer's Brief at 8-10. While the administrative law judge stated initially that Dr.

Rasmussen "does not separate out" the disability caused by claimant's coal mine employment from that caused by his heart disease, Decision and Order at 13, she credited Dr. Rasmussen's diagnosis of an "overall minimal loss of respiratory function" and Dr. Ranavaya's opinion that claimant had minimal pulmonary insufficiency. Decision and Order at 14; Director's Exhibits 41, 45; Claimant's Exhibit 1. The administrative law judge then noted that both physicians determined that claimant's job requirements included considerable heavy labor and found that "even the minimal pulmonary insufficiency caused by claimant's pneumoconiosis is disabling for such heavy manual labor and establishes the claimant's *prima facie* case of total disability." Decision and Order at 14.

In determining whether total respiratory disability has been established, the administrative law judge must first determine the nature of claimant's usual coal mine work, and then compare evidence of the exertional requirements of the work with medical opinions which provide a medical assessment of physical abilities and/or identify exertional limitations. *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986), *aff'd on recon.*, 9 BLR 1-104 (1986)(*en banc*). Contrary to employer's contention, a medical opinion need not be phrased in terms of total disability before total disability can be established. *Defore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1988); *McMath, supra*. A medical finding of mild impairment coupled with the fact-finder's determination of the nature of claimant's usual coal mine employment may be

sufficient to support an inference of totally disabling respiratory impairment. *Taylor v. Evans & Gambrel Co., Inc.*, 12 BLR 1-83 (1988); *Parsons v. Black Diamond Coal Co.*, 7 BLR 1-236 (1984).

Inasmuch as the opinions of Drs. Rasmussen and Ranavaya provided the administrative law judge with the degree of claimant's impairment and a detailed description of the exertional requirements of claimant's usual coal mine employment, the administrative law judge permissibly relied on these opinions in determining that claimant established total respiratory disability pursuant to Section 718.204(c)(4). See *McMath, supra*; *Defore, supra*; *Taylor, supra*; *Budash, supra*; see also *Eagle v. Armco Inc.*, 943 F.2d 509, 15 BLR 2-201 (4th Cir. 1991); *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991). Thus, we affirm the administrative law judge's findings regarding the opinions of Drs. Rasmussen and Ranavaya pursuant to Section 718.204(c)(4).

Employer next contends that the administrative law judge irrationally rejected the opinions of Drs. Fino and Sargent that claimant had no respiratory disability because they did not diagnose pneumoconiosis. Employer's Brief at 10-12. This contention is without merit. The administrative law judge permissibly found Dr. Fino's opinion to be of little probative value because of its conclusory nature and failure to reconcile the contradictory medical evidence in the record. Decision and Order at 9-10; see *Clark, supra*; *Lucostic, supra*. The administrative law judge also permissibly assigned little weight to Dr. Sargent's opinions because of their

equivocal nature. Decision and Order at 7; see *Justice, supra*; *Campbell, supra*; *Snorton, supra*. Thus, we affirm the administrative law judge's findings pursuant to Section 718.204(c)(4).

Finally, employer contends that the administrative law judge erred in shifting the burden of proof to employer to demonstrate the existence of comparable and gainful jobs which claimant could perform pursuant to Section 718.204(b). Employer's Brief at 12-14. The Board has held that once claimant presents a *prima facie* case that he is unable, from a respiratory standpoint, to perform his usual coal mine employment, the burden shifts to the party opposing entitlement to demonstrate that claimant is able to engage in comparable and gainful work. *Taylor v. Evans and Gambrel Company, Inc.*, 12 BLR 1-83 (1988). In this case, the administrative law judge found that claimant established total respiratory disability and properly shifted the burden of proof, noting that employer had produced no evidence of comparable and gainful work. Decision and Order at 14. Thus, we reject employer's contentions regarding the administrative law judge's findings pursuant to Section 718.204(b) and affirm the administrative law judge's conclusion that claimant established a mistake of fact and modification pursuant to Section 725.310.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge