BRB No. 95-0897 BLA

EZEKIAL H. VANCE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:
DOMINION COAL CORPORATION	)	
	)	
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 Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (94-BLA-0644) of Administrative Law Judge Ralph A. Romano 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). Pursuant to the parties' stipulation, the administrative law judge credited claimant with "at least ten years" of coal mine

employment[1] and one dependent for the purpose of benefits augmentation. Decision and Order at 2. The administrative law judge also determined that the claim was timely filed, that claimant was a miner under the Act, and that employer was the responsible operator. The administrative law judge found the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(1), (4) and that claimant was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204 and, accordingly, awarded benefits.

On appeal, employer contends that the administrative law judge erred in his weighing of the evidence pursuant to Sections 718.202(a) and 718.204(b), and provided an inadequate rationale for his findings. Employer's Brief at 15-22. Claimant responds, urging affirmance, and the Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.[2]

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

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[1] Claimant alleged thirty-three years of coal mine employment, and the administrative law judge found that claimant had worked eighteen years for employer. Decision and Order at 3-4; Director's Exhibit 2; Hearing Transcript at 16-17.

[2] We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment, dependency, miner, responsible operator status, entitlement date, and pursuant to 20 C.F.R. §§725.308, 718.202(a)(2), (3), 718.203(b), and 718.204(c). *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Employer contends that the administrative law judge erred at Section 718.202(a)(4) by according "significant weight" to a narrative x-ray interpretation, citing *Pettry v. Director, OWCP*, 14 BLR 1-98 (1990) and *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111 (1989). Employer's Brief at 16. Contrary to employer's contention, the administrative law judge did not rely upon Dr. Evans' x-ray reports in weighing the medical opinions, but merely summarized their contents in his discussion of the medical opinion evidence. Decision and Order at 11. Therefore, we reject employer's argument.

Employer further asserts that the administrative law judge erred by according diminished weight to the opinions of Drs. Renn and Fino because they did not examine claimant. Employer's Brief at 17. We hold that the administrative law judge acted within his discretion as fact-finder in according greater weight to the opinions of the examining physicians, and thus reject employer's argument. *See Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988); Decision and Order at 11.

Employer lastly contends at Section 718.202(a)(4) that the administrative law judge failed to recognize that the opinions of Drs. Sargent, Forehand, and Rasmussen were undocumented and unreasoned because they relied on positive x-ray readings when, employer asserts, the preponderance of the x-ray evidence is negative for pneumoconiosis. Employer's Brief at 16. Contrary to employer's assertion, the administrative law judge is not required to weigh the objective medical evidence against each individual medical report in determining whether it is reasoned and documented. *See Trumbo v. Reading Anthracite Co*., 17 BLR 1-85 (1993). Moreover, an administrative law judge may not discredit a medical opinion merely because it relies on a positive x-ray interpretation that conflicts with the weight of the x-ray evidence. *See Taylor v. Director, OWCP*, 9 BLR 1-22 (1986). Therefore, we reject employer's argument and affirm the administrative law judge's finding pursuant to Section 718.202(a)(4).[3]

Pursuant to Section 718.204(b), employer contends that the administrative law judge violated the Administrative Procedure Act (APA) in crediting the opinions of Drs. Forehand and Rasmussen over the contrary opinions of Drs. Sargent, Renn, and Fino because he failed to explain the rationale for his finding. Employer's Brief at 18-22.

[3] In light of our affirmance of the administrative law judge's finding pursuant to Section 718.202(a)(4), we need not address employer's allegations of error at Section 718.202(a)(1).

The administrative law judge noted the conflicting opinions of Drs. Forehand and Rasmussen that claimant's totally disabling respiratory impairment was due to both coal dust exposure and smoking and of Drs. Sargent, Renn, and Fino[4] that his impairment was due solely to smoking. Director's Exhibits 8, 10, 28; Employer's Exhibits 5, 11; Claimant's Exhibit 2.

The administrative law judge implicitly credited Dr. Forehand's testimony that pneumoconiosis is a "spectrum disease" that has no single pattern of ventilatory impairment, but rather presents a "mixed or obstructive and not a pure restrictive pattern" and Dr. Rasmussen's opinion that purely obstructive pulmonary impairments may be attributed to pneumoconiosis. Claimant's Exhibits 2-4; Decision and Order at 11, 15. "Considering the Claimant's extensive history of over thirty years smoking cigarettes and working in coal mine employment," the administrative law judge then concluded that "based on my review of all the evidence," claimant established total disability due to pneumoconiosis. Decision and Order at 14-15.

[4] The three examining physicians upon whom the administrative law judge permissibly relied, *see* discussion, *supra*, expressed conflicting views about the pattern of ventilatory impairment that would be seen in claimant's pulmonary function studies if pneumoconiosis were the cause. Dr. Sargent concluded that the findings of obstruction in the absence of restriction and broncho- reversibility indicated that cigarette smoking was the cause of claimant's respiratory impairment. Director's Exhibit 28; Employer's Exhibit 13. On the other hand, Drs. Forehand and Rasmussen opined that restriction need not necessarily accompany claimant's obstructive impairment to conclude that pneumoconiosis contributed to his totally disabling respiratory impairment. Director's Exhibit 10, Claimant's Exhibits 2-4.

Inasmuch as the administrative law judge explained that in light of claimant's documented extensive coal mine employment and smoking history, Drs. Forehand and Rasmussen provided a more persuasive rationale for their conclusion that claimant's pneumoconiosis contributes to his totally disabling respiratory impairment, we reject employer's APA contention. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Arnold v. Secretary of HEW*, 567 F.2d 258 (4th Cir. 1977). Moreover, the administrative law judge acted within his discretion in finding these two opinions to be more persuasive than Dr. Sargent's contrary opinion, *see Gorzalka v. Big Horn Coal Co*., 16 BLR 1-48 (1990); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984), and the Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable. *See Tackett, supra*; *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985). Thus, we conclude that the administrative law judge provided an adequate rationale for his finding, supported by substantial evidence, that pneumoconiosis is a contributing cause of claimant's respiratory impairment. *Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).[5]

[5] In light of our disposition of this issue, we also reject employer's contention that the medical opinions credited by the administrative law judge are legally insufficient to establish causation.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge