BRB No. 95-1858 BLA

WALTER JACKSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	DATE ISSUED:
Employer-Petitioner	)	
	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

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

Douglas A. Smoot (Jackson & Kelly), Charlestown, West Virginia, for employer.

Sarah M. Hurley (J. Davitt McAteer, Acting 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: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (93-BLA-1411) of Administrative Law Judge Frederick D. Neusner awarding medical 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[1] worked as a coal miner after December 31, 1969, accumulated at least twenty-three years of qualifying coal mine employment, and that employer was liable for medical benefits as the responsible operator because the evidence did not establish that claimant had complicated pneumoconiosis before December 31, 1969. Accordingly, medical benefits were awarded.

On appeal, employer contends that the administrative law judge erred in determining that claimant did not have complicated pneumoconiosis prior to January 1, 1970.[2] The Director, Office of Workers' Compensation Programs (the Director), responds urging affirmance. Claimant is not participating on 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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 administrative law judge's finding of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. Employer initially contends that the administrative law judge substituted his opinion for the opinions of Drs. Zaldivar, Chillag, Fino, and Castle that a 1966 x-ray interpretation actually indicated that claimant had complicated pneumoconiosis in the 1960's and that he failed to consider the deposition testimony of Drs. Castle and Zaldivar. Claimant's Brief at 7-11.

In a report dated May 4, 1966, Dr. White interpreted an x-ray made on that date as showing "an area measuring about three centimeters which appears to be a

[1]Claimant is Walter Jackson, the miner, who was awarded benefits by the Social Security Administration on a Part B claim. Director's Exhibits 3, 27. Claimant filed a claim for medical benefits under Part C on November 25, 1980. Director's Exhibit 1.

[2]*See* Section 422(c) of the Act, 33 U.S.C. §923(c).

completely healed tuberculosis lesion." Director's Exhibit 27. In an x-ray report dated September 14, 1966, Dr. McKay noted that the "appearance of the chest is unchanged as compared with the previous study of 5-4-66" and found that "fibronodular scarring, apparently stable, is again noted in the right upper lobe." Director's Exhibit 27. Dr. Zaldivar, in an opinion dated August 15, 1991, reviewed records and stated that shadows first noted in 1966 were Category B complicated pneumoconiosis. Director's Exhibit 16. In his deposition of February 28, 1994, he stated he found evidence of complicated pneumoconiosis in his review of x-rays from 1972. Employer's Exhibit 3.

Dr. Chillag, in a report dated December 14, 1993, reviewed medical records and x-rays and stated: "The three films from September 14, 1966, July 31, 1970 and September 10, 1970 were interpreted by a radiologists [*sic*]. All reported changes in the right upper lobe. The films thereafter are interpreted as demonstrating complicated pneumoconiosis." Employer's Exhibit 1.

Dr. Castle, in a report dated February 7, 1994, discussed his interpretations of films dating from 1972 to 1991, all of which diagnose complicated pneumoconiosis. Employer's Exhibit 2. While discussing Dr. White's 1970 report in his deposition of July 13, 1994, Dr. Castle stated:

> Certainly, the lesion he describes is conglomerate, and that would indicate that it had a size greater than one cm., so it tells me that - - his letter and his evaluation indicated that Mr. Jackson had a conglomerate lesion when he saw him in 1970, and that when he compared that x-ray to the films from 1966, they were unchanged, and that, in my mind, is excellent historical data to indicate that this lesion was present in 1970, and that it was unchanged from the lesion seen in 1966, and that it was consistent with complicated disease at that time.

Employer's Exhibit 4.

Dr. Fino reviewed the medical evidence and submitted a report dated February 7, 1994. He opined that claimant's complicated pneumoconiosis was present in 1966. Employer's Exhibit 2.

Upon considering the opinions and deposition testimony, the administrative law judge noted that none of the physicians, other than Drs. White and McKay, actually read the 1966 x-rays. Decision and Order at 8. He found that Dr. McKay's interpretations of the 1966 x-rays are "self evident and require no translation" while the opinions of Drs. Zaldivar, Chillag, Castle and Fino are "secondary or hearsay

evidence" of what Dr. McKay had to say. Decision and Order at 8. The administrative law judge further stated:

> In the context of this claim it is significant that Dr. McKay, a Board certified radiologist, included neither pneumoconiosis nor complicated pneumoconiosis in his reading of the 1966 x-ray, since the fact that pneumoconiosis is not mentioned supports the inference that the miner did not have coal workers' pneumoconiosis.

Decision and Order at 9.

The administrative law judge concluded by stating:

> Finally, as the consultative forensic opinions in EX 01, 02, 03 and 04 diagnose the presence of complicated pneumoconiosis, an etiology which was not addressed by the examining and attending physicians, they do not sustain the burden of proving the date when the claimant became disabled by complicated pneumoconiosis in determining whether or not the Employer is liable for the medical benefits as responsible operator.

Decision and Order at 9. The administrative law judge then found that employer was liable for the payment of benefits in this case.

In weighing the evidence of record, the administrative law judge need not accept the opinion of any particular medical witness or expert, but must weigh all the evidence and draw his own conclusions and inferences. *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). In this case, the administrative law judge permissibly gave greater weight to Dr. McKay's opinion because he performed a more thorough examination of claimant and permissibly discounted the opinions of Drs. Zaldivar, Chillag, Castle, and Fino because they never examined claimant and because he rationally found their conclusions inadequately supported by the underlying documentation. *See Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). Accordingly, we affirm the administrative law judge's finding that the opinions of Drs. Zaldivar, Chillag, Castle, and Fino do not establish that claimant had complicated pneumoconiosis prior to January 1, 1970.

Employer next contends that the evidence is "uncontradicted" that the complicated pneumoconiosis could not have arisen during the time that Mr. Jackson was exposed to coal dust after January 1, 1970 because Dr. White stated that the lesions that he found in his review of the 1966 x-ray had not changed when he

reviewed the 1970 x-ray. Employer's Brief at 15. Dr. White, in a report dated May 4, 1966, found an area which appeared to be a completely healed tuberculosis lesion measuring three centimeters in diameter. Director's Exhibit 27. In a report dated July 31, 1970, Dr. White reviewed an x-ray of that date and found no great change indicated. Director's Exhibit 27.

Although Dr. White did not find that the lesion had changed between 1966 and 1970, he did not diagnose complicated pneumoconiosis in either case. Director's Exhibit 27. Because the administrative law judge properly found that the record does not contain evidence that claimant had complicated pneumoconiosis prior to January 1, 1970, we reject this argument. 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 Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence established a worsening of the miner's condition while he was employed by employer after December 31, 1969 and thus is liable for payment of benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge