BRB No. 97-0467 BLA

CLAYTON SLONE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
ACTION ENERGIES, INCORPORATED	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order -- Denial of Benefits of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

J. Logan Griffith (Wells, Porter, Schmitt & Jones), Paintsville, Kentucky, for the employer.

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

PER CURIAM:

Claimant appeals the Decision and Order -- Denial of Benefits (95-BLA-1968) of Administrative Law Judge Paul H. Teitler rendered on a claim filed pursuant to the provisions of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). A claimant is entitled to benefits under the Act by establishing that he has pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that he is totally disabled by the disease. 30 U.S.C. §901; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 141, 11 BLR 2-1, 2-5 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Adams v. Director, OWCP*, 886 F.2d 818, 820, 13 BLR 2-52, 2-54 (6th Cir.1989).

I

Claimant worked in the mines for 18 years until 1992. *See* Director's Exhibit 2; Hearing Transcript (Tr.) at 8-9. Claimant filed for benefits under the Act on August 18, 1994. Director's Exhibit 1. This claim was administratively denied on March 13, 1995 by the Office of Workers' Compensation Programs, Director's Exhibit 17. Pursuant to claimant's request, the claim was referred on June 12, 1995 to the Office of Administrative Law Judges for a formal hearing. Director's Exhibits 18, 24. A hearing was conducted on May 22, 1996 by Administrative Law Judge Paul H. Teitler.

On December 3, 1996, the administrative law judge issued the Decision and Order rejecting the claim. The administrative law judge credited claimant with 18 years of coal mine employment based on the parties' stipulation at the formal hearing, Tr. at 5, and correctly adjudicated this claim pursuant to the permanent criteria set forth at 20 C.F.R. Part 718 because this claim was filed subsequent to March 31, 1980. *Saginaw Mining Co. v. Ferda*, 879 F.2d 198, 204, 12 BLR 2-376, 2-384 (6th Cir.1989). The administrative law judge also found that claimant failed to establish the existence of pneumoconiosis and total respiratory disability. Benefits were denied and this appeal followed.

II

On appeal, claimant generally alleges that the Decision and Order is incorrect. Petition for Review and Brief at 1. Claimant also avers that the administrative law judge erred by finding that he does not suffer from pneumoconiosis and that he is not "totally and permanently disabled pursuant to Section 718.20[4](c)(4)." In this regard, claimant contests the administrative law judge's failure to accord the medical report of Dr. Fritzhand "proper weight." *Id.* at 1-2.

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Upon consideration of the administrative law judge's Decision and Order, the administrative record as a whole, and the pleadings submitted by the parties, we conclude that the Decision and Order is supported by substantial evidence, contains no reversible error, and accords with applicable law. Accordingly, we affirm the Decision and Order denying benefits.

III

At the outset, we must address the adequacy of claimant's "Petition for Review and Brief," which consists of one and one-half pages. At the least, we decline to address the merits of claimant's general allegations. In these general assertions, claimant avers that the Decision and Order "is not in conformity with the medical evidence and the lay evidence[,]" that it "is clearly erroneous ... [and that it] is arbitrary, capricious, or an abuse of justice." Claimant's Petition for Review and Brief at 1. These broad contentions are clearly insufficient to invoke the Board's review. Similarly, claimant does not adequately challenge the administrative law judge's findings, under Sections 718.202(a)(1), (2) and (3), that claimant failed to establish the existence of pneumoconiosis.[1] Claimant does not allege any specific error made by the administrative law judge based upon the evidence of record or controlling authority, and does not otherwise "demonstrate with some degree of

[1]These findings are supported by substantial evidence. The administrative law judge evaluated the five x-ray interpretations of four x-rays of record; and of the x-rays which were read, only one was interpreted as positive by Dr. Lane, a B-reader, *see* Director's Exhibits 15-16; Employer's Exhibit 1. The administrative law judge was entitled to defer to the negative interpretations by readers with superior qualifications, *viz.* Drs. Halbert and Sargent, who were B-readers and Board Certified Radiologists, Director's Exhibits 15, 16; *see Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-85 (6th Cir. 1993), and to cite as well the preponderance of the negative readings to make a "qualitative," as well as a quantitative evaluation of the x-ray readings. *Id.*; *see Back v. Director, OWCP,* 796 F.2d 169, 172, 9 BLR 2-93, 2-97 (6th Cir. 1986). Claimant could not establish pneumoconiosis under Section 718.202(a)(2), because there is no biopsy or autopsy evidence in the record. Nor could he benefit from the presumptions accorded under Section 718.202(a)(3): the presumption found in section 718.304 does not apply because there was no evidence of complicated pneumoconiosis, and Sections 718.305 and 718.306 are foreclosed because this living miner's claim was filed after January 1, 1982.

specificity the manner in which substantial evidence precludes the denial of benefits or why the [administrative law judge's] decision is contrary to law." *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-47-48 (6th Cir. 1986); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); *see* 20 C.F.R. §802.211(b).

IV

We likewise find no merit in claimant's challenge to the administrative law judge's finding that claimant failed to establish that he was "totally and permanently disabled pursuant to Section 718.20[4](c)(4)."[2] In this regard, claimant avers that the administrative law judge "failed to give the report of Dr. Fritzhand proper weight. Dr. Fritzhand's report is a reasoned medical report, which supports the claimant's entitlement to federal black lung benefits." Claimant's Petition for Review and Brief at 2.

In order to establish entitlement to benefits, claimant must, *inter alia*, prove that he suffers from a totally disabling pulmonary or respiratory impairment. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036,1042, 17 BLR 2-16, 2-21 (6th Cir. 1993); *Carson v. Westmoreland Coal Company*, 19 BLR 1-16, 1-21 (1994), *modified on recon*. 20 BLR 1-64 (1996). A reasoned medical opinion may demonstrate total respiratory disability if it concludes that a miner is totally disabled or if its assessment of physical limitations, when credited by the administrative law judge and compared with the exertional requirements of the miner's usual coal mine work, supports the inference that the miner is disabled from performing his usual coal mine work. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894, 13 BLR 2-348, 2-356 (7th Cir. 1990); *Onderko v. Director, OWCP*, 14 BLR 1-2, 1-4 (1988).

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[2]Claimant does not challenge the administrative law judge's findings that he did not establish the presence of a totally disabling pulmonary or respiratory impairment on the basis of the criteria set forth at Sections 718.204(c)(1), (2) and (3). These findings are therefore affirmed. *Skrack v. Island Creek Coal* Co., 6 BLR 1-710, 1-711 (1983); *see Hix v. Director, OWCP*, 824 F.2d 526, 527, 10 BLR 2-191, 2-192-93 (6th Cir. 1987). We note that none of the clinical tests "qualifies" or meets the disability standards set forth in 20 C.F.R. Part 718, Appendices B & C. *See Director, OWCP v. Siwiec*, 894 F.2d 635, 637 n. 5, 13 BLR 2-259, 2- 262 n. 5 (3d Cir. 1990). The administrative law judge noted a discrepancy in the height measurements and permissibly found the miner's height to be 74.8" in applying the pulmonary function study disability criteria, *see Meyer v. Zeigler Coal Co.*, 894 F.2d 902, 906-07, 13 BLR 2-285, 2-288-90 (7th Cir.), *cert. denied* 498 U.S. 827 (1990); *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-222-23 (1983), although he neglected to note that claimant was not the same age when each of the studies in evidence was administered and applied disability standards for a miner of 46 years of age. Decision and Order at 8. This oversight is harmless because none of the studies qualifies regardless of age given the height as found by the administrative law judge. *Cf. Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 114-15, 19 BLR 2-70, 2-79-81 (4th Cir. 1995).

Claimant has demonstrated no abuse of discretion in the administrative law judge's decision not to defer to the opinion of Dr. Fritzhand on the question of respiratory disability. The administrative law judge evaluated the medical opinions of Drs. Broudy (Employer's Exhibit 1), Burki (Director's Exhibit 13), Fritzhand (Director's Exhibit 12) and Lane (Employer's Exhibit 1).

Dr. Fritzhand examined claimant on September 28, 1994 and conducted arterial blood gas testing, a pulmonary function study and interpreted an x-ray. Although Dr. Fritzhand did not detect pneumoconiosis by x-ray, he diagnosed the disease "based on [claimant's] years of [coal dust exposure] along with grossly abnormal [pulmonary function study results] & low [arterial blood gas study] PO2 [results]." Dr. Fritzhand interpreted claimant's pulmonary function study as showing a "mod[erately] severe restrictive pulmonary disease," and concluded that claimant's pulmonary impairment prevented him from returning to the mines. Director's Exhibit 12; *see* Director's Exhibit 11.

The administrative law judge noted Dr. Fritzhand's conclusions, Decision and Order at 11, but instead deferred to the conclusions of other physicians who opined that claimant did not suffer from a totally disabling pulmonary or respiratory impairment. Dr. Broudy opined that claimant "retains the respiratory capacity to perform the work of an underground coal miner or to do similarly arduous manual labor" and that claimant is not afflicted with "any significant pulmonary disease or respiratory impairment which has arisen from this man's occupation as a coal worker." Employer's Exhibit 1. The administrative law judge viewed Dr. Broudy's opinion as supported by his objective testing, *viz.* a non-qualifying pulmonary function study performed with "less than optimal effort" and a non-qualifying arterial blood gas study that demonstrated "mild resting arterial hypoxemia with elevation of the carboxyhemoglobin indicating continued exposure to smoke." *See* Decision and Order at 12.

Dr. Lane concluded that claimant "does have an occupational lung disease caused by his coal mine employment based upon x-ray," but also opined that from a pulmonary standpoint claimant could perform his usual coal mine employment and that claimant's impairment is due to heart disease. Dr. Burki, who reviewed Dr. Fritzhand's report and clinical tests, stated that claimant "does not appear to be disabled due to a primary respiratory impairment [and that the] nature of impairment appears to be cardiac ischemic disease as well as obesity." Employer's Exhibit 1.

The administrative law judge is charged with the evaluation and weighing of the medical evidence, may draw appropriate inferences therefrom, *see Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 231, 18 BLR 2-290, 2-298 (6th Cir. 1994); *see also Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190, 1-192 (1989), and is not required to credit the conclusions of any particular medical expert. In this instance, the administrative law judge was entitled to defer to the medical opinion evidence which he found was best supported by the objective clinical evidence of record over the contrary opinion of Dr. Fritzhand. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

Because the administrative law judge's decision to defer to the medical opinions of Drs. Broudy, Burki and Lane on the issue of total respiratory disability is not "inherently incredible or patently unreasonable," *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied* 440 U.S. 911 (1979), and because these opinions and the corresponding clinical tests constitute substantial evidence in support of the administrative law judge's finding that claimant does not suffer from a totally disabling pulmonary or respiratory impairment, *see* 20 C.F.R. §718.204(c)(4), we affirm the administrative law judge's finding that claimant has failed to establish total respiratory disability. Because claimant must satisfy this element to establish entitlement under the Act, *see Adams*, 886 F.2d at 820, 13 BLR at 2-54, we affirm the Decision and Order denying benefits.[3]

[3]The administrative law judge does not discuss claimant's settlement of his state occupational pneumoconiosis claim, Director's Exhibit 3; Employer's Exhibit 1, his lay testimony, Tr. at 7; *but cf.* Tr. at 8-9 (left employer in October 1991 for bladder operation; claimant released to return to work but quit after 13 days because "it was so dusty in there"), and does not list the non-qualifying results of the arterial blood gas study administered by Dr. Broudy. Employer's Exhibit 1. This error is harmless. Because the settlement agreement does not constitute a finding of disability, the non-qualifying study exceeds the disability criteria, and claimant's lay testimony, uncorroborated in view of the administrative law judge's decision to discount Dr. Fritzhand's opinion, "is not much help," *Fife v. Director, OWCP*, 888 F.2d 365, 370, 13 BLR 2-109, 2-116 (6th Cir. 1989), this error "causes no prejudice." *See Sierra Club v. Slater*, 120 F.3d 623, 637 (6th Cir. 1997). Also, the administrative law judge's failure to render adequate findings on whether the medical opinion evidence establishes the existence of pneumoconiosis pursuant to Section 718.202(a)(4) is harmless error, in view of our decision to affirm the administrative law judge's findings at Section 718.204(c). *See Belcher v. Director, OWCP*, 895 F.2d 244,

246, 13 BLR 2-273, 2-275 (6th Cir. 1989).

Accordingly, the Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge