BRB No. 00-0328 BLA

THOMAS A. JONES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELKAY MINING COMPANY	)	
	)	DATE ISSUED:
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 of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle), Pineville, West Virginia, for claimant.

Kathy L. Snyder (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (1999-BLA-557) of Administrative Law Judge Daniel L. Leland 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*

[1]Claimant is Thomas A. Jones, the miner, who filed claims for benefits on July 9, 1970 and May 16, 1974 which were denied on March 22, 1979. Director's Exhibit 28. Claimant filed another claim on February 6, 1987 which was denied on May 13, 1987. Director's Exhibit 29. Claimant filed the instant claim on April 9, 1998. Director's Exhibit 1.

seq. (the Act). This case involves a duplicate claim. The administrative law judge found that claimant established thirty-six and one-quarter years of qualifying coal mine employment and that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), total respiratory disability pursuant to 20 C.F.R. §718.204(c) or a material change in conditions pursuant to 20 C.F.R. §725.309. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in failing to find that claimant established the existence of pneumoconiosis or total respiratory disability and, consequently, a material change in conditions. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, responds, declining to submit a brief 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).

The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, has held that in order to establish a material change in conditions pursuant to Section 725.309, claimant must prove "under all of the probative medical evidence of his condition after the prior denial, at least one of the elements previously adjudicated against him." *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g*, 57 F.3d 402, 19 2-223 (4th Cir. 1995). In the present case, claimant's prior claim was denied on the grounds that claimant failed to establish the existence of pneumoconiosis or total respiratory disability. Director's Exhibit 29.

Initially, we reject claimant's contention that the administrative law judge erred in finding that claimant had failed to establish the presence of a totally disabling respiratory impairment. Claimant's Brief at 4-8. The record contains an arterial blood gas study dated June 15, 1998 and obtained in connection with Dr. Ranavaya's examination which yielded qualifying results after exercise. This study also yielded two non-qualifying results when administered at rest. Director's Exhibits 3, 11. The administrative law judge acknowledged

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[2]We affirm the administrative law judge's findings regarding the length of claimant's coal mine employment and that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(3) or total respiratory disability pursuant to Section 718.204(c)(1) and (3) as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[3]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values.

that the results of the after exercise blood gas study are qualifying but also noted that Dr. Castle, in a deposition dated August 24, 1999, opined that the results of the test are a "transient phenomenon due to claimant's coronary artery disease which has nothing to do with lung disease." Decision and Order at 7; Employer's Exhibit 9 at 21. Dr. Ranavaya opined that claimant has a totally disabling respiratory impairment. Director's Exhibit 10. Drs. Castle, Spagnolo and Jarboe opined that the miner is not disabled from a pulmonary standpoint, but that he is disabled due to his coronary artery disease. Employer's Exhibits 3, 6, 7, 9. The administrative law judge noted that Dr. Ranavaya, whose credentials are not in the record, was not aware of claimant's cardiac condition, for which claimant had surgery two months after Dr. Ranavaya examined him, and found that Dr. Ranavaya's opinion was "poorly-reasoned." Decision and Order at 7; Director's Exhibits 10, 15. The administrative law judge then credited the opinions of Drs. Castle, Spagnolo and Jarboe, all pulmonary specialists, because they were aware of claimant's coronary artery disease and thus he found their opinions are well-reasoned. Decision and Order at 7

Pursuant to Section 718.204(c), when considering the issue of total disability, the administrative law judge must weigh the like and unlike evidence and determine whether claimant established total respiratory disability by a totality of the evidence. *Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27 (1991); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*)*; Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.* 9 BLR 1-236 (1987). In the instant case, the administrative law judge considered the medical opinions of Drs. Ranavaya, Castle, Spagnolo and Jarboe and the qualifying arterial blood gas study and, after determining that the opinions of the highly-qualified specialists were well-reasoned, acted within his discretion in finding that the sole qualifying blood gas study and the contrary opinion by Dr. Ranavaya were not sufficient to support a finding of total respiratory disability pursuant to Section 718.204(c). Decision and Order at 7; *Budash, supra*; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989)*; Clark, supra; McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Fields, supra*; *Shedlock, supra; Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Consequently, we reject claimant's contentions and affirm the administrative law judge's findings that the newly submitted medical opinion evidence is insufficient to establish total respiratory disability pursuant to Section 718.204(c)(2), (4).

Claimant also contends that the administrative law judge erred in finding that the newly submitted medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Claimant's Brief at 5-8. Dr. Ranavaya opined that claimant has pneumoconiosis, while Drs. Castle, Spagnolo and Jarboe opined that claimant did not have pneumoconiosis. Director's Exhibit 10; Employer's Exhibits 3, 6, 7, 9. The administrative law judge acted within his discretion in assigning less weight to Dr. Ranavaya's opinion than to the opinions

of Drs. Castle, Spagnolo and Jarboe because: Dr. Ranavaya's opinion is based on a coal mine employment history of over forty years of underground coal mine employment, when the administrative law judge found that claimant's coal mine employment consisted of twenty-three years of surface mining; Dr. Ranavaya relied on a positive x-ray interpretation when the weight of the x-ray evidence is negative for the existence of pneumoconiosis; Dr. Ranavaya's opinion is not well-reasoned and the credentials of Drs. Castle, Spagnolo, and Jarboe are superior to Dr. Ranavaya's. Decision and Order at 6; *Lafferty, supra; Clark, supra; McMath, supra; Dillon, supra; Addison v. Director,* OWCP, 11 BLR 1-68 (1988); *Martinez, supra; Wetzel, supra*. As a result, we reject claimant's contention and affirm the administrative law judge's finding that the newly submitted medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Consequently, we affirm the administrative law judge's finding that claimant failed to establish a material change in conditions pursuant to Section 725.309 and the denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY

Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge