BRB No. 06-0660 BLA

FREDDIE FIELDS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
RAIDER MINING, INCORPORATED	)	DATE ISSUED: 03/26/2007
	)	
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 F. Solomon, Administrative Law Judge, United States Department of Labor.

Freddie Fields, Fedscreek, Kentucky, *pro se*.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (04-BLA-06376) of Administrative Law Judge Daniel F. Solomon 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 seq.* (the Act). The administrative law judge found that the parties stipulated to at least sixteen years of coal mine employment and that employer was the responsible operator. Decision and Order at 2, 4; Hearing Transcript at 28. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.[1] Decision and Order at 2. After considering the evidence of record, the administrative law judge concluded that it established the existence of simple pneumoconiosis based on x-ray evidence, biopsy evidence, and medical opinion evidence at 20 C.F.R. §718.202(a)(1), (a)(2), and (a)(4),

[1] Claimant filed his application for benefits on January 24, 2001. Director's Exhibit 2.

and that claimant was entitled to the presumption that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), based on his more than ten years of coal mine employment. Decision and Order at 9-10. The administrative law judge found, however, that the evidence failed to establish total respiratory disability at 20 C.F.R. §718.204(b)(2)(i)-(iv) and/or total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). The administrative law judge also found that the evidence failed to establish the existence of complicated pneumoconiosis at 20 C.F.R. §718.304(a)-(c) and that claimant was not, therefore, entitled to the irrebuttable presumption of totally disabling pneumoconiosis. 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer has not filed a response brief. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Section 921(c)(3) of the Act creates an irrebuttable presumption that total disability is due to pneumoconiosis if: (A) an x-ray of the miner's lungs shows at least one opacity greater than one centimeter in diameter; (B) a biopsy reveals "massive lesions" in the lungs; or (C) a diagnosis by other means reveals a result equivalent to (A) or (B). 30 U.S.C. §921(c)(3). In applying the standards set forth in each prong, "one must perform equivalency determinations to make certain that regardless of which diagnostic technique is used, the underlying condition triggers the irrebuttable presumption. Because prong (A) sets out an entirely objective scientific standard, *i.e.*, an

opacity on an x-ray greater than one centimeter, x-ray evidence provides the benchmark for determining what under prong (B) is a "massive lesion" and what under prong (C) is an equivalent diagnostic result reached by other means. *Eastern Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Braenovich v. Cannelton Industries, Inc.*, 22 BLR 1-236 (2003)(Gabauer, J., concurring). A claimant is only entitled to benefits, however, if he has a "chronic dust disease of the lung," and to make such a determination, the administrative law judge must look at all the evidence presented at Section 718.304(a)-(3). *See Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.[2] Considering the relevant evidence of record and the administrative law judge's findings, we hold that the administrative law judge acted within his discretion, as fact-finder, in concluding that the evidence failed to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv); or that claimant was entitled to invocation of the irrebuttable presumption of totally disabling pneumoconiosis at 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Kuchwara v. Director, OWCP*, 7 BLR 1-167, 1-170 (1984). The administrative law judge properly found that a totally disabling respiratory impairment was not established at Section 718.204(b)(2)(i), (ii), as all of the pulmonary function and blood gas studies of record were non-qualifying.[3] 20 C.F.R. §718.204(b)(2)(i), (ii); Director's Exhibits 10, 12, 23; Employer's Exhibit 1; Decision and Order at 5, 10. The administrative law judge also properly found that total respiratory disability was not established at Section 718.204(b)(2)(iii) as there was no evidence of cor pulmonale with right-sided congestive heart failure. *See* 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 10. In addition, the administrative law judge properly found that the medical opinion evidence failed to establish total respiratory disability at Section 718.204(b)(2)(iv), as the administrative law judge permissibly found that the opinion of claimant's treating physician, Dr. Nichols, the only opinion to find a

[2] The record indicates that the miner was last employed in the coal mine industry in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

[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 exceeds those values. *See* 20 C.F.R. §718.204(b)(2) (i), (ii).

totally disabling respiratory impairment, was not well-reasoned or well-documented, as Dr. Nichols failed to explain the basis for his conclusion.[4] *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-623 (6th Cir. 2003); *Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co*, 12 BLR 1-149 (1989)(*en banc*); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); Decision and Order at 10; Director's Exhibits 22, 41. Instead, the administrative law judge properly found that the contrary medical opinion evidence was entitled to greater weight as those opinions were supported by the objective evidence of record.[5] *See Williams*, 338 F.3d at 513, 22 BLR at 2-647; *Clark*, 12 BLR at 1-155; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985); Decision and Order at 10; Director's Exhibits 10, 12, 23; Employer's Exhibits 1, 2. Moreover, the administrative law judge found that Dr. Nichols lacked the pulmonary credentials of those physicians who reached contrary conclusions regarding total respiratory disability.[6] *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113, 114 (1988).

With respect to the invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304, the administrative law judge properly found that the x-ray evidence failed to establish the existence of complicated pneumoconiosis as there was no x-ray evidence showing an opacity greater than one centimeter in diameter, 20 C.F.R. §718.304(a); Employer's Exhibit 1; Director's Exhibits 10, 12, 23, 26.

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[4] Dr. Nichols's report consists of a form titled "Statement of Treating Physician" where he responded "yes" to the question of whether claimant is totally disabled from performing any and all kinds of gainful employment due to coal workers' pneumoconiosis. This statement does not, however, refer to specific findings made on examination of claimant or to the results of any objective testing. Director's Exhibit 22.

[5] Drs. Myers, Baker, Dahhan, and Broudy opined variously that claimant did not have a disabling respiratory impairment or that he retained the physical ability to perform his coal mine employment, or the work of a miner. Director's Exhibits 10, 12, 23; Employer's Exhibit 1. Their opinions are based on examination, symptoms, history, and the results of objective testing. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000).

[6] The administrative law judge noted that Dr. Nichols curriculum vitae was not in the record, although claimant referred to him as a family practitioner. Hearing Transcript at 16. The administrative law judge also noted that the qualifications of Drs. Myers and Baker were not in the record. The administrative law judge noted that Drs. Dahhan and Broudy were Board-certified pulmonary specialists. Decision and Order at 10.

Regarding the conflicting opinions of Drs. Dennis and Caffrey, the administrative law judge noted that Dr. Dennis found a 1.5 centimeter nodule in the left upper lobe resection, not the lung itself. The administrative law judge further noted that Dr. Dennis identified the abnormalities found on biopsy as progressive massive fibrosis, Claimant's Exhibit 2. The administrative law judge noted, however, that Dr. Caffrey stated that the nodule seen by Dr. Dennis was within the lymph node tissue, not the lung tissue, and that Dr. Dennis, himself, had stated that "mild coal worker's pneumoconiosis is suspected as the etiological factor in this lesion." Claimant's Exhibit 1 at 3. Moreover, the administrative law judge noted that Dr. Caffrey's report was more complete than Dr. Dennis's as Dr. Dennis cited only his own findings on biopsy. While Dr. Caffrey, in addition to reviewing Dr. Dennis's report, cited medical literature to support his opinion and conducted his own microscopic examination of the biopsy slides.

In considering this evidence, the administrative law judge noted that Dr. Dennis failed to provide the requisite equivalency determination, and failed to discuss the relevance of the location of the nodule, *i.e.*, lymph node versus lung. Moreover, the administrative law judge noted that Dr. Dennis did not explain his finding of "progressive massive fibrosis" or equate this finding with the size of an opacity seen on x-ray. The administrative law judge, therefore, properly found that the opinion of Dr. Dennis was insufficient to trigger the irrebuttable presumption. *See* 20 C.F.R. §718.304(b)-(c); *Gray v. SLC Coal Co.*, 176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 22 BLR 2-554 (4th Cir. 1999); *Braenovich*, 22 BLR at 1-244; *Lohr v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-1264 (1984); *Scarbro*, 220 F.3d at 258, 22 BLR at 2-105; *Lester*, 993 F.2d at 1145, 17 BLR at 2-117; Claimant's Exhibits 1, 2; Decision and Order at 11. Additionally, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Caffrey, because Dr. Caffrey had superior qualifications to Dr. Dennis.[7] *See Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 22 BLR 2-495 (6th Cir. 2002); *Dillon*, 11 BLR at 1-114; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Decision and Order at 11; Claimant's Exhibits 1, 2; Employer's Exhibit 3. As there was no other evidence of complicated pneumoconiosis in the record, we affirm the administrative law judge's finding that the medical evidence fails to establish the existence of complicated pneumoconiosis and invocation of the irrebuttable presumption of totally disabling pneumoconiosis at Section 718.304. *See Smith v. Island Creek Coal Co.*, 7 BLR 1-734 (1985); *Lohr*, 6 BLR 1-1264. Thus, as claimant has failed to establish the existence of totally disabling pneumoconiosis, an essential element of entitlement, benefits are precluded. *See Trent*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2.

[7] Dr. Caffrey is Board-certified in Anatomical and Clinical Pathology while the qualifications of Dr. Dennis are not in the record. Claimant's Exhibits 1, 2; Employer's Exhibit 3.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge