BRB No. 06-0773 BLA

JOHN W. MADDEN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KANNAN MINING COMPANY, INCORPORATED	)	
	)	
	)	DATE ISSUED: 03/27/2007
and	)	
	)	
AMERICAN RESOURCES INSURANCE	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Sherri P. Brown (Ferreri & Fogle), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-6216) of Administrative Law Judge Thomas F. Phalen, Jr. 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). This case involves a claim filed on March 17, 2003. After crediting claimant with 22.80 years of coal mine employment, the administrative law judge found that the evidence did not establish the existence of pneumoconiosis pursuant

to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b). Accordingly the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the medical opinion evidence does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant also argues that the administrative law judge erred in finding that the evidence does not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii) and (iv). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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 under 20 C.F.R. Part 718 in a living miner's claim, a 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. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Claimant contends that the administrative law judge erred in finding that the medical opinion evidence does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[1] Claimant specifically contends that the administrative law judge erred in finding that Dr. Rasmussen's opinion[2] does not establish the existence of pneumoconiosis. We disagree. The administrative law judge permissibly discredited the diagnosis of coal workers' pneumoconiosis rendered by Dr. Rasmussen in his June 30, 2003 report because the administrative law judge found that it was merely a restatement

[1] Because no party challenges the administrative law judge's findings that the evidence does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] In a report dated June 30, 2003, Dr. Rasmussen diagnosed coal workers' pneumoconiosis based on "30+ years of coal mine employment and x-ray evidence of pneumoconiosis." Director's Exhibit 12.

of an x-ray interpretation. *Cornett v. Benham Coal Co.*, 277 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); Decision and Order at 11; Director's Exhibit 12.

Dr. Rasmussen also diagnosed "COPD/emphysema" attributable to claimant's coal mine dust exposure and cigarette smoking. Director's Exhibit 12. The administrative law judge noted that this diagnosis, if credited, is sufficient to support a finding of "legal pneumoconiosis."[3] Decision and Order at 11. The administrative law judge, however, permissibly accorded less weight to Dr. Rasmussen's diagnosis because he "did not explain how the objective evidence supported a finding of COPD/emphysema due to both coal dust exposure and cigarette smoking, and not just cigarette smoking."[4] Decision and Order at 11; *see Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

Claimant's remaining statements neither raise any substantive issue nor identify any specific error on the part of the administrative law judge in determining that the medical opinion evidence does not establish the existence of pneumoconiosis.[5] We,

[3] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

[4] Although Dr. Rasmussen provided an explanation as to how coal dust exposure and cigarette smoking both contribute to pulmonary impairments, the administrative law judge noted that Dr. Rasmussen's general statement was "not linked to [c]laimant's specific circumstances." Decision and Order at 11 n.10. Because Dr. Rasmussen's opinion was based on generalities, rather than on claimant's specific condition, the administrative law judge permissibly found that it did not satisfy claimant's burden of establishing that his lung disease arose out of his coal mine employment. *See Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5 (1985)(holding that a medical opinion based on generalities, rather than specifically focusing on the miner's condition, may be accorded less weight).

[5] Dr. Broudy diagnosed mild chronic obstructive airways disease attributable solely to cigarette smoking. Employer's Exhibit 1. The administrative law judge found that Dr. Broudy, like Dr. Rasmussen, did not provide any explanation for his causation opinion. Decision and Order at 11. Because Drs. Rasmussen and Broudy "offered conclusory opinions that failed to explain why [c]laimant's COPD was the result of cigarette smoking alone or smoking and coal dust exposure combined," the administrative law judge found that the medical opinion was equally balanced and,

therefore, affirm the administrative law judge's finding that the medical opinion evidence does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

In light of our affirmance of the administrative law judge's findings that the evidence does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *Trent*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry v. Director, OWCP*, 9 BLR at 1-2. Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the evidence does not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii) and (iv). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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therefore, insufficient to establish the existence of "legal pneumoconiosis" pursuant to 20 C.F.R. §718.202(a)(4). *Id.*