BRB No. 99-0194 BLA

ROBERT D. JONES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY)		DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Philip A. LaCaria, Welch, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (97-BLA-849) of Administrative Law Judge Pamela Lakes Wood awarding 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 credited claimant with forty years of coal mine employment and adjudicated this duplicate claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the recently submitted evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(4) and, in light of the decision of the United States Court of Appeals for the Fourth Circuit in *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*,

57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), the administrative law judge found that claimant demonstrated a material change in conditions pursuant to 20 C.F.R. §725.309. The administrative law judge further found that the evidence of record was sufficient to establish total disability due to pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.203(b) and 718.204(b), (c)(2), (4). Accordingly, benefits were awarded. On appeal, employer challenges the administrative law judge's evaluation of the medical opinion evidence of record to find that claimant established the existence of pneumoconiosis, total disability and disability causation as well as a material change in conditions. *See* 20 C.F.R. §§718.202(a)(4), 718.204(b), (c)(4) and 725.309(d). Claimant has not filed a brief in this appeal. The Director, Office of Workers' Compensation Programs, has declined to participate in this 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 the 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out to coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Pursuant to Section 718.204(b), in this case arising within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, claimant must prove by a preponderance of the evidence that his pneumoconiosis was at least a contributing cause of his totally disabling respiratory impairment, *see Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

Employer contends that the administrative law judge erred in relying on the opinion of Dr. Rasmussen to support her finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4), total disability pursuant to Section 718.204(c)(4) and disability causation pursuant to Section 718.204(b). Employer further contends that the administrative law judge erred in according determinative weight to the opinion of Dr. Rasmussen by simply stating that his opinion was well-reasoned and well-documented, without considering factors

bearing on the relative merits of the opinion and the conflicting opinions of Drs. Castle, Zaldivar and Morgan, in contravention of the Administrative Procedure Act (the APA), 5 U.S.C. §557(c)(3)(A), as incorporated by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d), and 30 U.S.C. §932(a), and the decisions of the United States Court of Appeals for the Fourth Circuit in *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998), and *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997).[1] Employer argues that the administrative law judge failed to provide sufficient reasons for crediting the opinion of Dr. Rasmussen, who diagnosed the existence of pneumoconiosis and concluded that claimant did not have the pulmonary capacity to resume his last coal mine employment job, and failed in discounting the opinion of Dr. Castle, who concluded that claimant did not have pneumoconiosis or any other respiratory or pulmonary impairment related to coal mine employment and whose opinion was supported by the opinions of two reviewing physicians, Drs. Zaldivar and Morgan. We agree. In evaluating the medical opinion evidence, the administrative law judge must assess "the qualifications of the respective physicians, the explanation for their medical opinions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses." *Hicks*, *supra*; *Akers*, *supra*; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23 (4th Cir. 1997). In weighing the medical opinion evidence, the administrative law judge summarized the conflicting medical opinions and noted that the majority of them did not support claimant's burden and that Drs. Castle and Zaldivar possessed superior qualifications to Dr. Rasmussen. Decision and Order at 11. Despite these factors, the administrative law judge found that the opinion of Dr. Rasmussen was better reasoned and more supported by the objective evidence and was thus more persuasive as it was "much better reasoned" than Dr. Castle's opinion and entitled to more weight than the opinions of Drs. Zaldivar and Morgan as they did not examine claimant. *Id*. The administrative law judge stated that she found Dr. Rasmussen's report better-reasoned and supported by the objective evidence based on factors such as claimant's coal mine employment of forty years, relatively short and remote smoking history, subjective complaints, deterioration in clinical test results, recent qualifying blood gas studies and the opinions by the other examining physician that claimant does suffer from some degree of pulmonary impairment. *Id*. The administrative law judge, however, does not refer to any evidence of record to support her conclusion that these factors are relevant nor does she explain the significance of any of the factors that she cites. In addition, in considering whether total respiratory disability due to pneumoconiosis

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's last coal mine employment occurred in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Decision and Order at 9; Director's Exhibit 2.

was established pursuant to Section 718.204(b), (c)(4), the administrative law judge again credited the opinion of Dr. Rasmussen, which concluded that pneumoconiosis and coal mine employment were a cause of claimant's respiratory disability, for essentially the same reasons stated in her discussion at Section 718.202(a)(4). Decision and Order at 14-15. Thus, the administrative law judge again found that this opinion was the most persuasive and, in conjunction with the blood gas study evidence, sufficient to establish that claimant's pulmonary impairment was totally disabling and that his coal mine employment contributed, in part, to the total disability. *See* 20 C.F.R. §718.204(b), (c)(4); *Hobbs*, *supra*; *Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990); *Shedlock v. Bethlehem Steel Corp.*, 9 BLR 1-195 (1986), *aff'd on recon. en banc*, 9 BLR 1-236 (1987). As employer argues, the administrative law judge has failed to adequately explain her conclusion that the report of Dr. Rasmussen is better reasoned and more supported by the objective evidence than that of Dr. Castle nor is this conclusion obvious from a review of the opinions and the objective studies of record. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc)*; Director's Exhibits 26, 42. Although the most recent blood gas study yielded qualifying exercise values, the resting values were nonqualifying as were the earlier blood gas studies and all of the pulmonary function studies of record were nonqualifying. Decision and Order at 5, 6; Director's Exhibits 27, 28, 40, 42, 46. Moreover, there is also merit to employer's contention that the administrative law judge appears to have mechanically discounted the opinions of Drs. Zaldivar and Morgan solely on the ground that they did not examine claimant without considering the bases for their conclusions. *See Hicks*, *supra*; *Akers*, *supra*. Consequently, we vacate the administrative law judge's findings under Sections 718.202(a)(4) and 718.204(b), (c)(4) as well as Section 725.309(d) and remand the case for reconsideration of the opinions of Drs. Rasmussen, Castle, Zaldivar and Morgan thereunder in compliance with the APA.

Accordingly, the Decision and Order of the administrative law judge awarding benefits is vacated and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM C. NELSON, Acting
Administrative Appeals Judge