

BRB No. 91-1607 BLA

CHESTER W. FLANNERY)
)
 Claimant-Petitioner)
)
 v.)
)
 BIG MAC COAL 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 Giles McCarthy, Administrative Law Judge, United States Department of Labor.

Vernon M. Williams (Wolfe & Farmer), Norton, Virginia, for claimant.

Robert M. McDowell (Arter & Hadden), Washington, D.C., for employer.

Before: STAGE, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (89-BLA-1085) of Administrative Law Judge Giles McCarthy 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). Claimant filed his claim for benefits on February 3, 1986 and the administrative law judge considered the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the parties stipulated that claimant established at least ten years of coal mine employment. The administrative law judge then found that claimant established the existence of pneumoconiosis, which arose out of his coal mine employment, pursuant to 20 C.F.R. §§718.202(a) and 718.203. The administrative law judge further found that

claimant failed to establish he was totally disabled pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in weighing the medical opinion evidence of record, particularly the opinions of Drs. Clarke and Nash, pursuant to 20

C.F.R. §718.204(c)(4).¹ Employer responds in support of the administrative law judge's Decision and Order denying benefits and the Director, Office of Workers' Compensation Programs, has chosen not to respond in this case.

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are in accordance with 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).

After careful consideration of the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that any error therein is harmless. The administrative law judge on this record properly found that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(c). In making this finding, the administrative law judge permissibly found that the opinion of Dr. Clarke was not well reasoned as the physician interpreted a non-qualifying pulmonary function study to show "only a mild respiratory impairment" and then relied on that study to conclude that claimant is totally disabled. Decision and Order at 5; Tackett v. Cargo Mining Co., 12 BLR 1-11 (1988). The administrative law judge also permissibly accorded Dr. Nash's opinion less weight as he based his opinion on erroneous regulatory values when interpreting the results of claimant's pulmonary function study. See Decision and Order at 4; Claimant's Exhibit 1; 20 C.F.R. §718.204(c)(1). The administrative law judge further permissibly accorded the opinions of Drs. Penman, Wright, Dahhan and Anderson, that claimant is not totally disabled, the greatest weight as they are well reasoned and better supported by their underlying documentation. See Decision and Order at 6; Director's Exhibit 22, Employer's Exhibits 1, 6; Clark v. Karst-Robbins Coal Co., 12 BLR 1-149 (1989); Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987). Consequently, as the administrative law judge's findings and inferences are supported by substantial evidence, and in light of the fact that the Board may not reweigh the evidence or substitute its own inferences on appeal, the administrative law judge's findings at 20 C.F.R. §718.204(c)(4) are affirmed. See Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989).

¹The administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(3) is affirmed as unchallenged on appeal. Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

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

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge