BRB No. 04-0194 BLA

SAMUEL L. BOYD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WHITE DEER COAL COMPANY	)	DATE ISSUED: 06/21/2004
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
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 Denying Benefits of Daniel L. Solomon, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2002-BLA-05195) of Administrative Law Judge Daniel L. Solomon rendered 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).[1] The administrative law judge credited claimant with 9.25 years of qualifying coal mine employment based on the evidence of record and adjudicated this duplicate claim pursuant to 20 C.F.R. Part 718.[2] The administrative law judge considered all of the evidence submitted subsequent to the previous denial and found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in failing to accord dispositive weight to the treating physicians in finding that the evidence was insufficient to establish the existence of pneumoconiosis arising out of coal mine employment and total disability pursuant to 20 C.F.R. §§718.202(a), 718.203(c) and 718.204(b)(2), (c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not participated 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 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).

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 of coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202,

---

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2] Claimant filed his initial claim for black lung benefits on August 6, 1975. This claim was denied by Administrative Law Judge Daniel J. Roketenetz in a Decision and Order on Remand issued February 20, 1992. Decision and Order at 1; Director's Exhibit 1. On appeal, the Board affirmed the denial of benefits in *Boyd v. White Dear Coal Co.*, BRB No. 92-1137 BLA (Jan. 31, 1995)(unpub.). *Id.* Claimant took no further action on that claim and filed his second application for benefits on April 24, 1998, which the district director denied on September 18, 1998. Decision and Order at 2; Director's Exhibit 2. Claimant took no further action on that claim and filed the instant claim on February 2, 2001. Decision and Order at 3; Director's Exhibit 4.

718.203, 718.204. Failure of claimant 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).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal 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.

Claimant asserts that the administrative law judge should have accorded dispositive weight to the opinions of Dr. Sunduram and his associate, Dr. Sarf, based on Dr. Sundaram's status as claimant's treating physician for one and one-half years. As the administrative law judge noted, the criteria set forth in 20 C.F.R. §718.104(d)(1)-(4) for consideration of a treating physician's opinion are applicable to medical evidence developed after January 19, 2001, the effective date of the amended regulations. Decision and Order at 18-19. In this case, the administrative law judge specifically considered Dr. Sundaram's opinion in light of the criteria provided in Section 718.104(d), but permissibly discredited the doctor's opinion because he found it was not well-reasoned or well-documented.[3] *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); Decision and Order at 19. Thus, we reject claimant's assertion that the administrative law judge should have accorded dispositive weight to the opinion of Dr. Sundaram and his associate, Dr. Sarf, based on Dr. Sundaram's status as the claimant's treating physician.

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987). Consequently, as claimant makes no other specific challenges to the administrative law judge's findings on the

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, which has held that in black lung litigation, the opinions of treating physicians are not presumptively correct nor are they afforded automatic deference. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 510-13, 22 BLR 2-625, 2-640-47 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-326 (6th Cir. 2002). In *Williams*, the court stated that, rather, "the opinions of treating physicians get the deference they deserve based on their power to persuade." *Williams*, 277 F.3d at 513, 22 BLR 2-647.

merits, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis as it is supported by substantial evidence and is in accordance with law. *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Because claimant has failed to establish the existence pneumoconiosis pursuant to Section 718.202(a), the element of entitlement previously adjudicated against him, we affirm the administrative law judge's implicit finding that the evidence was insufficient to establish a material change in conditions pursuant to Section 725.309(d) (2000) in accordance with *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994) and *Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001). Consequently, we affirm the denial of benefits. *Ross*, 42 F.3d 993, 19 BLR 2-10; *see Kirk*, 264 F.3d 602, 22 BLR 2-288.

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

_____
REGINA C. McGRANERY
Administrative Appeals Judge