BRB No. 99-0440 BLA

TEDDY SMITH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD 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 on Remand - Awarding Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Lawrence J. Moise, II, Abingdon, Virginia, for claimant.

H. Ashby Dickerson, (Penn, Stuart, Eskridge & Jones), Abingdon, Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand - Awarding Benefits (97-BLA-0255) of Administrative Law Judge Daniel L. Leland 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 has been before the Board

previously.[1] On remand, the administrative law judge reconsidered the medical opinions and determined that claimant established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) and total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). Accordingly, benefits were awarded. On appeal, employer contends that the administrative law judge erred in his consideration of the medical opinions by Drs. Sargent and Fino at 20 C.F.R. §§718.202(a)(4) and 718.204(b). Claimant has not responded to this appeal. The Director, Office of Workers' Compensation Programs (the Director), has indicated that he will not participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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).

[1]In *Smith v. Clinchfield Coal Co.*, BRB No. 97-1631 BLA (Aug. 14, 1998), the Board affirmed the administrative law judge's determination that claimant established thirty-six years of coal mine employment, that the opinions by Drs. Paranthaman and Robinette support a finding of pneumoconiosis at 20 C.F.R. §718.202(a)(4), that Dr. Robinette's opinion supports a finding of causation at 20 C.F.R. §718.204(b), and that total disability was established pursuant to 20 C.F.R. §718.204(c)(1) and (4). The Board further found that the administrative law judge erred in rejecting the opinions of Drs. Sargent and Fino at 20 C.F.R. §718.202(a)(4), and because this erroneous finding was the basis for the administrative law judge's decision to discredit these opinions regarding causation, the Board vacated the administrative law judge's findings at 20 C.F.R. §718.204(b). Lastly, the Board affirmed the date of onset of total disability as January 1, 1995, the date of filing of the claim.

At Section 718.202(a)(4), employer contends that the administrative law judge erred in determining that Dr. Sargent's opinion[2] was, essentially, hostile to the Act. The administrative law judge stated that "[a]lthough I do not find Dr. Sargent's opinion hostile to the Act, I do consider several of his comments to be inconsistent with the intentions of the Act and regulations and to detract from his opinion's credibility." Decision and Order on Remand at 3. The administrative law judge found that Dr. Sargent did consider "other factors" in reaching his conclusions, but found that the physician's opinion indicates that he believes that without a certain type of x-ray result, and because Dr. Sargent also believes that pneumoconiosis does not progress once a miner leaves the mines, the physician's opinion could not be accorded greater weight than the opinions of the two other well-reasoned opinions by examining physicians. *Id.* The administrative law judge then found

[2]Dr. Sargent's August 20, 1996 opinion was based on a physical examination of claimant as well as a review of medical, social and employment histories, symptoms, x-ray and objective tests. Dr. Sargent opined that claimant did not suffer from coalworkers' pneumoconiosis based on the fact that claimant did not have characteristic chest x-ray or pulmonary function changes of pneumoconiosis. Dr. Sargent further stated that when pneumoconiosis causes a ventilatory impairment, it causes a mixed obstructive and restrictive ventilatory pattern and causes an impairment coupled with characteristic chest x-ray changes. Because claimant's impairment is purely obstructive, and claimant possesses a normal total lung capacity, Dr. Sargent concluded that coal dust could not be the causative agent. Dr. Sargent opined that claimant's cigarette smoking is the cause of his mild, non-disabling ventilatory impairment. Director's Exhibit 34.

Dr. Sargent submitted a second opinion, dated April 11, 1997, which was based on a review of Dr. Robinette's medical opinion and the objective tests generated during his examination of claimant. Dr. Sargent noted that claimant's pulmonary function results obtained by Dr. Robinette revealed some deterioration, resulting in a moderate impairment, but that since Dr. Sargent's August 1996 evaluation of claimant was conducted two years and four months after claimant stopped working in the mines, any deterioration could not be considered due to coalworkers' pneumoconiosis since the impairment due to simple coalworkers' pneumoconiosis is maximal at the time the miner stops mining and does not progress after cessation of mining employment. Dr. Sargent further found that Dr. Robinette's x-ray findings were at the lowest level of positivity for simple coalworkers' pneumoconiosis and were in the lower lung zones, which is atypical for coalworkers' pneumoconiosis. The physician noted his disagreement with the studies cited by Dr. Robinette which state that pneumoconiosis can result in a purely obstructive impairment and concluded by stating that he disagreed with Dr. Robinette's opinion and continued to believe that claimant suffers from an obstructive ventilatory impairment due to cigarette smoking. Employer's Exhibit 15.

that although Dr. Fino's opinion is reasoned, he did not examine claimant and the only opinion of record that supports his conclusion is that of Dr. Sargent. The administrative law judge stated that he could not accord Dr. Fino's opinion more weight than those of the two examining physicians, Drs. Paranthaman and Robinette, and found that the preponderance of the evidence established the existence of pneumoconiosis at Section 718.202(a)(4).

We disagree with employer that the administrative law judge committed any error in his consideration of the evidence at Section 718.202(a)(4). Although employer is correct that a discussion of the chest x-rays at Section 718.202(a)(4) alone is insufficient to establish pneumoconiosis at this subsection, Employer's Brief at 3, it is Dr. Sargent whose opinion states that claimant does not possess the characteristic x-ray changes of pneumoconiosis, which, in part, impacted his opinion that claimant did not suffer from pneumoconiosis. Director's Exhibit 34. Moreover, the administrative law judge rationally considered the statement by Dr. Sargent, that "the impairment present in simple coal worker's pneumoconiosis is maximal at the time the miner stops mining and does not progress after cessation of mining employment," detracted from the credibility of the physician's opinion regarding the nature of claimant's impairment because it is a well-established principle that pneumoconiosis is a progressive disease. *See Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-76 (3d Cir. 1995); *Orange v. Island Creek Coal Co.*, 786 F.2d 724, 8 BLR 2-192 (6th Cir. 1986); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Finally, the administrative law judge permissibly found that Dr. Sargent's failure to consider claimant's thirty-six year coal mine employment history as a contributing or aggravating factor in the miner's impairment further undermined the physician's opinion. *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). Thus, as the administrative law judge acted within his discretion in determining that Dr. Sargent's opinion was based on several questionable premises, we affirm his determination that the opinion was entitled less weight.

Employer also contends that the administrative law judge erred in his "summary discrediting" of the Dr. Fino's opinion.[3] We disagree with employer that the administrative

[3]Dr. Fino submitted an opinion on April 2, 1997, based on his review of the medical records in this case. Dr. Fino stated that because in this case, claimant's obstruction improves following bronchodilators and the obstruction is much greater than one would expect as a result of coal mine dust-related disease, he did not believe that claimant suffered from a coal mine dust-related condition. The physician concluded that claimant suffered from a moderate respiratory impairment related to cigarette smoking and unrelated to coal mine dust inhalation and that if claimant's usual coal mine

law judge discredited Dr. Fino's opinion "for no reason at all." Employer's Brief at 4. The administrative law judge rationally found that although Dr. Fino's opinion is reasoned, the physician did not examine claimant and the only other physician to support his opinion was Dr. Sargent, whose opinion had been accorded less weight. Thus, the administrative law judge acted with his discretion in finding Dr. Fino's opinion was entitled to less weight than the other opinions of record. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*). In crediting the opinions of Drs. Robinette and Paranthaman, the administrative law judge rationally relied on their well reasoned and documented opinions to find that the preponderance of the evidence establishes the existence of pneumoconiosis at Section 718.202(a)(4). *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993).

Pursuant to Section 718.204(b), employer contends that the administrative law judge erred in discrediting the opinions of Drs. Sargent and Fino on the basis that neither physician diagnosed pneumoconiosis. Employer contends that both physicians provided well-reasoned and documented opinions, and that Dr. Fino additionally opined that even if claimant suffered from pneumoconiosis, his opinion regarding the cause of disability would be no different. The administrative law judge again found that Dr. Sargent's statement that simple pneumoconiosis does not progress absent further dust exposure undermined the opinion, and accorded it little weight. Decision and Order on Remand at 3. Inasmuch as this credibility determination is within the administrative law judge's discretion and supported by substantial evidence, it is affirmed. *See Mullins, supra*; *Orange, supra*; *Clark, supra*; *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Brown v. Director, OWCP*, 7 BLR 1-730 (1985). We also affirm the administrative law judge's decision to accord little weight to the opinion of Dr. Sargent and Dr. Fino because the physicians' underlying premise that claimant did not have pneumoconiosis was contrary to the administrative law judge's findings at Section 718.202(a)(4) and therefore were entitled to diminished weight on the issue of whether claimant's total disability was due to pneumoconiosis . *See Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); *Trujillo v.*

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employment entailed heavy labor to be performed for more than fifty percent of his day, then claimant would be considered disabled. Employer's Exhibit 7.

On April 23, 1997, Dr. Fino reviewed additional chest x-rays and considered Dr. Robinette's March 20, 1997 opinion. He noted that neither Dr. Sargent's August 19, 1996 nor Dr. Robinette's March 12, 1997 pulmonary function studies showed an improvement following bronchodilator, but that this would not be unusual in a cigarette smoking induced lung disease, as this demonstrates variability. Dr. Fino then disagreed with the medical literature cited by Dr. Robinette, and reiterated his earlier conclusions regarding his diagnosis of claimant. Employer's Exhibit 18.

Kaiser Steel Corp., 8 BLR 1-472 (1986). 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 Clark, supra*; *Anderson v. Valley of Utah, Inc.*, 12 BLR 1-111 (1989). As the administrative law judge properly reconsidered the evidence pursuant to Sections 718.202(a)(4) and 718.204(b), we affirm his finding that claimant established entitlement to benefits.

Accordingly, the administrative law judge's Decision and Order on Remand - Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge