BRB No. 99-0718 BLA

ROY LEE PROFFITT	)	
Claimant-Petitioner	)	
	)	DATE ISSUED:
v.	)	
PEABODY COAL COMPANY	)	
Employer-Respondent	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DECISION and ORDER
Party-in-Interest		

Appeal of the Decision and Order and Order Denying Request for Reconsideration of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

John Cline (New River Breathing Center), Scarbro, West Virginia, for claimant.

Paul E. Frampton (Bowles, Rice, McDavid, Graff & Love, P.L.L.C.), Fairmont, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order and the Order Denying Request for Reconsideration (98-BLA-0481) of Administrative Law Judge Linda S. Chapman 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). The administrative law judge credited claimant with "over 20 years" of coal mine employment, Decision and Order at 3, but found that the medical evidence of record did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Specifically, the administrative law judge found that the weight of the x-ray readings viewed in light of the readers' radiological qualifications did not establish the existence of

pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), and found that the weight of the better reasoned and explained medical opinion evidence did not establish that claimant suffers from pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Accordingly, the administrative law judge denied benefits.

Claimant requested reconsideration, directing the administrative law judge's attention to the testimony of Drs. Walker and Kinder, two members of the West Virginia Occupational Pneumoconiosis Board. Claimant's Request for Reconsideration at 2-3, 7. Both physicians testified at a state workers' compensation hearing that claimant has an impairment due in part to occupational pneumoconiosis. Employer's Exhibit 1 at 85-90.

In her order on reconsideration, the administrative law judge repeated that she found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(4) because she relied on the medical opinions that she found to be well-reasoned. The administrative law judge added that nothing in claimant's request for reconsideration changed any of her findings. Accordingly, she denied reconsideration.

On appeal, claimant contends that the administrative law judge erred by not discussing the testimony of Drs. Walker and Kinder. Claimant alleges further that the administrative law judge did not apply the legal definition of pneumoconiosis set forth at 20 C.F.R. §718.201, and improperly credited medical opinions based upon assumptions that are contrary to the Act. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.

---

[1] The administrative law judge found that the record did not contain any evidence relevant to the method of proof set forth at 20 C.F.R. §718.202(a)(2), and that the presumptions listed at 20 C.F.R. §718.202(a)(3) are inapplicable on this record.

[2] We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(1)-(3). *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983).

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 law. 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to Section 718.202(a)(4), the administrative law judge based her finding that claimant did not establish the existence of pneumoconiosis on the reports and testimony of Drs. Zaldivar, Fino, and Renn. The administrative law judge found within her discretion that although Drs. Ranavaya, Gaziano, Rasmussen, Jabour, and Ullah had diagnosed pneumoconiosis, their opinions were not as well-reasoned, explained, or supported as those of Drs. Zaldivar, Fino, and Renn. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). The administrative law judge explained that she found the opinions of the latter three physicians to be more credible because they "described in exhaustive detail how [c]laimant's test results over the years," supported their conclusion that he does not have pneumoconiosis but instead suffers from asthma and emphysema unrelated to his coal dust exposure. Decision and Order at 20.

Claimant contends that we must remand this case because the administrative law judge did not discuss the state workers' compensation hearing testimony of Drs. Walker and Kinder in making her finding at Section 718.202(a)(4). Claimant's Brief at 2-3. We disagree. Claimant refers to brief testimony by Dr. Walker stating that claimant has a 50% impairment, and by Dr. Kinder stating that claimant has a 30% impairment, due to occupational pneumoconiosis. Employer's Exhibit 1 at 85-90. Each physician stated that he was making a "specific finding of fact" in this regard, *Id*. at 87, 90, but neither physician referred to any medical evidence or identified the medical or legal criteria he relied upon to reach his conclusion. Under these circumstances, any error by the administrative law judge in not discussing their testimony is harmless. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989)(*en banc*). That is particularly so given that the administrative law judge's

---

[3] The administrative law judge did consider the state workers' compensation award that was based, in part, on their testimony. Decision and Order at 13 n.6; Director's Exhibit 3.

reason for crediting the medical opinions concluding that claimant does not have pneumoconiosis was that they were "well-reasoned," and offered detailed explanations for the conclusions reached. Decision and Order at 21; *see Hicks, supra*; *Akers, supra*. Consequently, we reject claimant's contention.

Claimant's assertion that the administrative law judge did not apply the legal definition of pneumoconiosis also lacks merit. Claimant's Brief at 3-4. The administrative law judge quoted the definition set forth at Section 718.201, Decision and Order at 3, and in discussing the medical opinions, she reviewed in detail the physicians' discussion of the etiology of claimant's respiratory impairments. Decision and Order at 13-20. In weighing the medical opinions, the administrative law judge accorded greater weight to the opinions of Drs. Zaldivar, Fino, and Renn because she found that they provided well-reasoned and supported explanations for why they concluded that claimant's asthma and emphysema are not related to coal dust exposure. Decision and Order at 20-21; *see* 20 C.F.R. §718.201; *Hicks, supra*; *Akers, supra*. Thus, it is clear that the administrative law judge applied the legal definition of pneumoconiosis. *See Roberts v. Director, OWCP*, 74 F.3d 1233, 20 BLR 2-67 (4th Cir. 1996); *Barber v. Director, OWCP*, 43 F.3d 899, 900, 19 BLR 2-61, 2-67 (4th Cir.1995). Therefore, we reject claimant's contention.

Finally, claimant argues that the opinions of Drs. Zaldivar, Fino, and Renn are hostile to the Act. Claimant's Brief at 4-7. Contrary to claimant's contention, however, none of these physicians categorically excluded obstructive impairments from the legal definition of pneumoconiosis or otherwise relied on assumptions contrary to the Act. *See Stiltner v. Island Creek Coal Co*., 86 F.3d 337, 341, 20 BLR 2-246, 2-254-55 (4th Cir. 1996). Rather, they reasoned that claimant's physical examination findings, x-rays, CT scan, objective test results, and his ventilatory pattern of severe reversible obstruction indicate that he suffers from asthma unrelated to coal mine employment and emphysema due to smoking. Director's Exhibit 27; Employer's Exhibits 1-6. The administrative law judge gave valid reasons for deferring to their opinions. *See Hicks, supra*; *Akers, supra*; *Trumbo v. Reading Anthracite Co*., 17 BLR 1-85, 1-88-89 and n.4 (1993). Substantial evidence supports her finding. Therefore, we reject claimant's contention and we affirm the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(4).

Because claimant has failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a necessary element of entitlement under Part 718, we affirm the denial of benefits. *See Trent, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*).

Accordingly, the administrative law judge's Decision and Order and Order Denying Request for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge