BRB No. 03-0716 BLA

ORVILLE BURNETTE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 04/29/2004
	)	
	)	
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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Ronald E. Gilbertson, (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (2002-BLA-5187) of Administrative Law Judge Rudolf L. Jansen denying benefits on a claim[1] 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 found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability pursuant to 20 C.F.R. §718.204(b).[2] Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in his evaluation of the x-ray evidence and medical opinions relevant to the existence of pneumoconiosis and his evaluation of the evidence regarding total disability. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not 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 this Board and may not be disturbed. 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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that he is totally disabled due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove 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)(*en banc*).

In the instant case, the administrative law judge determined that claimant failed to carry his burden of proof to establish that he was totally disabled. With respect to the medical opinion evidence relevant to total disability, claimant contends that the opinions of Drs. Baker and Hussain establish that he is totally disabled from his usual coal mine

[1] Claimant filed his application for benefits on February 12, 2001. Director's Exhibit 2.

[2] The Department of Labor 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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

work and that the administrative law judge erred in relying on the opinions of Drs. Dahhan and Vuskovich to find that claimant did not have a totally disabling respiratory impairment.[3]

In discussing the medical opinions, the administrative law judge determined that Dr. Baker's opinion could not establish total respiratory disability. Dr. Baker stated that claimant had pneumoconiosis. He further opined that since persons who developed pneumoconiosis should limit their further exposure to coal dust, it could be implied that claimant was "100% occupationally disabled for work in the coal mining industry." Director's Exhibit 12. The administrative law judge concluded that Dr. Baker's opinion was not supportive of a finding of total respiratory disability. This was proper. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Taylor v. Evans & Grambrel Co.*, 12 BLR 1-83 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988).[4]

Similarly, the administrative law judge properly assigned less probative weight to Dr. Hussain's opinion that claimant was totally disabled due to dyspnea and impaired effort tolerance, had a moderate respiratory impairment, and was unable to perform his usual coal mine employment because he deemed that physician's opinion to be insufficiently reasoned. Decision and Order at 11. A reasoned opinion is one in which the administrative law judge finds the underlying medical documentation adequate to support the physician's conclusions. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Whether a medical report is sufficiently documented and reasoned is for the administrative law judge as the fact-finder to decide. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Although Dr. Hussain found that claimant could not perform his usual coal mine employment, the administrative law judge found that the pulmonary function study and arterial blood gas studies obtained during his examination were interpreted as normal. Because Dr. Hussain did not explain the medical basis for his finding of disability in light of these normal values, the administrative law judge properly assigned Dr. Hussain's opinion less probative weight. This was rational. *Collins v. J & L Steel*, 21 BLR 1-181, 1-189 (1999)("A reasoned medical opinion is one in which the physician explains how the underlying documentation supports the physician's conclusions."); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 n.4

[3] The administrative law judge's findings that claimant is unable to establish total disability under 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *See Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 10-11.

[4] Contrary to claimant's contention, Dr. Baker's status as a treating physician is not relevant since he did not provide an opinion supportive of a finding of total disability. *See* 20 C.F.R. §718.104(d).

(1993); *Clark*, 12 BLR at 1-155; *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

In contrast, the opinions of Drs. Dahhan and Vuskovich, that claimant could perform his usual coal mine employment, were properly credited by the administrative law judge at Section 718.204(b)(2)(iv), as he found their opinions supported by the underlying evidence, *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR 1-19, because Dr. Dahhan was a pulmonary specialist, and because both doctors had reviewed the entire record and, therefore, had a more complete picture of claimant's health. *Clark*, 12 BLR 1-149; *Dillon v. Director, OWCP*, 11 BLR 1-113, 1-114 (1988); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986). Additionally, in considering the opinions on total disability, the administrative law judge was aware of the exertional requirements of claimant's usual coal mine employment. Decision and Order at 3; *see Hvizdzak v. North American Coal Corp.*, 7 BLR 1-469, 1-471 (1984). Further, although claimant argues that the administrative law judge erred in failing to discuss claimant's age, education, and work experience in relation to his ability to work outside of the coal mine industry, such analysis is unnecessary since the administrative law judge found that the opinions failed to establish that claimant was disabled from performing his usual coal mine employment. *See Taylor*, 12 BLR 1-83.

After considering the medical opinion evidence in its entirety, the administrative law judge determined that the narrative reports weighed in favor of a finding that claimant was not totally disabled, and that the medical opinions were corroborated by the non-qualifying pulmonary function and arterial blood gas studies. Decision and Order at 11-12. This was rational based on the evidence of record. The administrative law judge properly weighed the evidence as a whole pursuant to Section 718.204(b)(2)(i)-(iv), and his finding that claimant was not totally disabled is supported by substantial evidence. *See Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 1-204 (1986); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987). Because we affirm the administrative law judge's finding that claimant was not totally disabled, an essential element of entitlement, we decline to address claimant's arguments with respect to the issue of pneumoconiosis. *Trent*, 11 BLR 1-26; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4, 1-5 (1986)(*en banc*); *Perry*, 9 BLR 1-1. Since claimant has failed to establish total disability, a requisite element of entitlement, benefits are precluded. *Id*.

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge