BRB No. 05-0759 BLA

GEORGE FIELDS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED: 04/19/2006
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Tracey E. Burkett (ARDF of Kentucky, Inc.), Richmond, Kentucky, for claimant.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (02-BLA-0429) of Administrative Law Judge Daniel J. Roketenetz 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 previously been before the Board.[1] In our most recent decision, without addressing claimant's contentions regarding the administrative law judge's evaluation of the evidence, we vacated the administrative

[1] The complete procedural history of this case is contained in the Board's prior decisions. *Fields v. Director, OWCP*, BRB No. 03-0297 BLA (Sep. 30, 2003)(unpub.); *Fields v. Director, OWCP*, BRB No. 99-1158 BLA (Aug. 10, 2000)(unpub.).

law judge's December 18, 2002 Decision and Order denying benefits and remanded the case to the administrative law judge to conduct a hearing and issue a new decision. *Fields v. Director, OWCP*, BRB No. 03-0297 BLA (Sep. 30, 2003)(unpub.).

Following a hearing, held on February 17, 2005, in a Decision and Order dated May 23, 2005, the administrative law judge credited the miner with twelve and one-half years of coal mine employment,[2] as stipulated by the parties, and found that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202 and failed to establish total disability at 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical opinion evidence relevant to the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), and erred in his evaluation of the blood gas study and medical opinion evidence relevant to the issue of total disability at 20 C.F.R. §718.204(b)(2)(ii) and (iv). The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's denial of benefits.[3]

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

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 a finding of 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).

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[2] The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 2. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[3] The administrative law judge's finding of twelve and one-half years of coal mine employment and his finding that claimant did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3), and further failed to establish the existence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(i) and (iii), are affirmed as unchallenged on appeal. *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).

Claimant initially asserts that the administrative law judge erred in his evaluation of the medical opinion evidence on the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), specifically contending that the administrative law judge erred in discrediting the opinions of Drs. Sundaram, Wicker and Baker, regarding whether claimant established the existence of clinical pneumoconiosis. We disagree.

In considering the medical opinion evidence, the administrative law judge properly noted that Dr. Sundaram, who diagnosed the existence of coal workers' pneumoconiosis, and Dr. Wicker, who found no evidence of coal workers' pneumoconiosis, had each examined claimant at least three times, and each time had recorded a different smoking history for claimant. In his reports dated July 25, 1990, July 12, 1994 and October 3, 1996, Dr. Sundaram recorded no specific smoking history, noting only that claimant had quit ten to fifteen years ago, but in his report dated July 27, 1993, the physician recorded a smoking history of two packs per day for thirty years. Director's Exhibits 18, 20. Dr. Wicker, in his initial report dated May 15, 1991, noted a smoking history of less than one-half pack per day for thirty-one years, in his report dated March 15, 1994, recorded a history of two packs per day for thirty years, and in his final report dated September 19, 2000, recorded a smoking history of one pack per day for thirty years. Director's Exhibits 8, 18, 45. Contrary to claimant's argument, the administrative law judge acted within his discretion in according less weight to the opinion of Dr. Sundaram because the physician's recorded smoking histories did not comport with his own finding that the record evidence supported a smoking history of one pack per day for thirty years. *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Rickey v. Director, OWCP*, 7 BLR 1-106 (1984); *see also Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985); Decision and Order at 14. Similarly, the administrative law judge permissibly accorded less weight to the opinion of Dr. Wicker as the histories recorded in his three reports were both inconsistent with each other, and largely inconsistent with the administrative law judge's own findings. *Bobick*, 13 BLR at 1-52; *Stark*, 9 BLR at 1-36; *Rickey*, 7 BLR at 1-106; *see also Maypray*, 7 BLR at 1-683; Decision and Order at 14.

We further reject claimant's argument that the administrative law judge erred in his interpretation and application of *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000) to find Dr. Baker's diagnosis of coal worker's pneumoconiosis unreasoned. Petition for Review at 5. Contrary to claimant's argument, the administrative law judge specifically acknowledged that Dr. Baker performed a physical examination and reported the results of objective testing. The administrative law judge acted within his discretion in finding, however, that despite this additional documentation, as Dr. Baker expressly indicated that his diagnosis of coal workers' pneumoconiosis was based solely on claimant's positive x-ray and history of coal dust exposure, and as Dr. Baker failed to explain how the results of his other testing might support his diagnosis, the physician's diagnosis of coal worker's pneumoconiosis did not

constitute a reasoned medical opinion. *Cornett*, 227 F.3d at 569, 22 BLR at 2-107; Decision and Order at 15-16.

Claimant further asserts that the administrative law judge erred in failing to find the existence of legal pneumoconiosis, and specifically erred in discrediting the opinion of Dr. Baker that, in addition to coal workers' pneumoconiosis, claimant suffers from chronic obstructive pulmonary disease (COPD), hypoxemia and chronic bronchitis, all due in part to coal dust exposure. Petition for Review at 4-6. Again, we disagree.

Initially, we hold that the administrative law judge correctly determined that although Drs. Bethencourt, Kawamleh, Rahhal, Sundaram, Alam and Wicker all diagnosed the existence of COPD, as none of these physicians attributed this diagnosis to coal dust exposure, their opinions are insufficient to establish the existence of legal pneumoconiosis. 20 C.F.R §§718.201(a)(2), 718.202(a)(4). Contrary to claimant's argument, because none of these physicians opined that coal dust aggravated claimant's COPD, the administrative law judge was not required to independently determine whether claimant's diagnosed respiratory conditions could have been aggravated by coal dust exposure; claimant has the burden to establish this element of entitlement through the submission of relevant, probative evidence. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); Petition for Review at 6.

We further hold that the administrative law judge acted within his discretion in finding Dr. Baker's additional diagnoses of coal dust-related COPD, hypoxemia and chronic bronchitis to be insufficient to meet claimant's burden of proof. Contrary to claimant's arguments, the administrative law judge fully explained that because Dr. Baker did not indicate that claimant's hypoxemia was chronic, this condition did not meet the definition of legal pneumoconiosis as set forth in the regulations at 20 C.F.R. §718.201(a)(2). Director's Exhibit 74; Petition for Review at 6; Decision and Order at 16. Further, the administrative law judge permissibly found Dr. Baker's diagnosis of chronic bronchitis arising out of coal mine employment to be not well-reasoned or well-documented because the physician stated that this diagnosis was based on claimant's history of reported symptoms and did not identify any medical testing or data in support of his conclusion. *See Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983); Decision and Order at 16. Finally, the administrative law permissibly found that Dr. Baker's diagnosis of COPD was also not well-reasoned or well-documented because the physician specifically stated that he had relied on the results of a pulmonary function study, which was later found invalid by the administrative law judge. *McMath v. Director, OWCP*, 12 BLR 1-6 (1988).

It is within the purview of the administrative law judge to weigh the evidence, draw inferences and determine credibility. *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989). Because the administrative law judge examined each medical opinion "in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based," *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983), and explained whether the diagnoses contained therein constituted reasoned medical judgments under 20 C.F.R. §718.202(a)(4), we affirm the administrative law judge's finding that the medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Cornett*, 227 F.3d at 576, 22 BLR at 2-120; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). Consequently, we affirm the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a).

Because we affirm herein the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a), we need not address claimant's challenge to the administrative law judge's findings in determining that the evidence fails to establish the existence of a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2)(ii) and (iv). A finding of entitlement to benefits is precluded in this case. *See Trent*, 11 BLR at 1-27.

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits 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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JUDITH S. BOGGS
Administrative Appeals Judge