BRB No. 05-0819 BLA

JAMES C. HONAKER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SEA "B" MINING COMPANY	)	DATE ISSUED: 04/27/2006
	)	
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 Awarding Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Susan D. Oglebay, Castlewood, Virginia, for claimant.

Timothy W. Gresham (Penn, Stuart, & Eskridge), Abingdon, Virginia, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (04-BLA-6171) of Administrative Law Judge Linda S. Chapman 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). Based on the date of filing, November 18, 2002, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, noting that, *inter alia*, the parties agreed that claimant established more than twenty-six years of coal mine employment and that the evidence established the existence of coal workers' pneumoconiosis. Decision and Order at 2; Hearing Transcript at 10-12. The administrative law judge concluded, therefore, that the only issue before her was whether the evidence established that claimant was totally disabled due to pneumoconiosis. On considering the evidence, the administrative law judge found that it established a total

respiratory disability and that the total disability was due to pneumoconiosis. 20 C.F.R. §718.204(b)(2)(i)-(iv), (c). Accordingly, benefits were awarded.

On appeal, employer argues that the administrative law judge erred in finding that the evidence established a total respiratory disability. In response, claimant contends that substantial evidence supports the award of benefits. The Director Office of Workers' Compensation Programs, (the Director) has filed a letter stating 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, Henchman & Grills 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 prove 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, 718.203, 718.204. Failure 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)(*en banc*).

Employer contends that the administrative law judge erred in relying on the qualifying after-exercise portion of Dr. Forehand's December 5, 2002 arterial blood gas study and on Dr. Forehand's opinion to find a totally disabling respiratory impairment established.[1] Employer contends that Dr. Forehand's opinion was based on a medical study article which was not credible and not fully discussed by the administrative law judge.

In weighing the evidence, the administrative law judge found that Dr. Forehand offered a cogent and articulate explanation of the significance of the qualifying, after-exercise blood gas study results. The administrative law judge found that Dr. Forehand concluded that these results indicated that claimant had a significant gas exchange impairment, *i.e.*, that claimant had insufficient residual oxygen transfer capacity to perform his previous coal mine employment, and that the sole factor in causing this gas exchange impairment was his exposure to coal mine dust. The administrative law judge

[1] A "qualifying" arterial blood gas study yields values that are equal to or less than the appropriate values set forth in the tables appearing at Appendix C to 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(ii).

placed determinative weight on the opinion of Dr. Forehand because she found: Dr. Forehand's discussion of the types and workings of hypoxemia to be thorough and detailed; Dr. Forehand's opinion was based on his extensive experience and training in the field of pulmonary medicine; Dr. Forehand's opinion was based on his thorough explanation and testing of claimant and his review and consideration of all the medical evidence of record; and his opinion was in accord with objective test results and supported by a respected and published medical study. This was permissible. *See Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 22 BLR 2-265 (7th Cir. 2001).

Employer next contends that the administrative law judge erred in refusing to accord any weight to the reasoned and cogent opinions of Drs. Hippensteel and Castle who found that claimant's qualifying, after-exercise blood gas study results were not indicative of a totally disabling respiratory impairment. Employer asserts that the differing levels of exercise administered by the physicians undermined the credibility of Dr. Forehand's opinion and that the administrative law judge erred by failing to accord greater weight to the reports of Drs. Hippensteel and Castle, as their qualifications in the field of pulmonary medicine exceed those of Dr. Forehand. Further, employer contends that the administrative law judge impermissibly shifted the burden of proof regarding causation to employer when she failed to credit Dr. Hippensteel's opinion because the doctor did not address the medical study cited by Dr. Forehand and did not address the possibility of a ventilatory perfusion mismatch, which Dr. Forehand attributed to claimant's hypoxemia. Likewise, employer asserts that the administrative law judge impermissibly shifted the burden of proof to employer when she required Dr. Castle to specify the non-coal dust related cause of claimant's hypoxemia, instead of merely indicating that pneumoconiosis was not the cause.

Contrary to employer's arguments, it was within the administrative law judge's discretion to find Dr. Castle's opinion equivocal and unreasoned because Dr. Castle was unable to determine the cause of claimant's hypoxemia after exercise, he stated that he could not attribute it to heart disease in the absence of any documented evidence of heart disease, and he indicated that if pneumoconiosis were the cause, other abnormalities would have been present on the pulmonary function studies. Decision and Order Awarding Benefits at 15-16; Director's Exhibit 11; *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-2 (4th Cir. 1997); *Billips v. Bishop Coal Co.*, 76 F.3d 371, 20 BLR 2-130 (4th Cir. 1996); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

Further, contrary to employer's argument, the administrative law judge thoroughly considered the relative qualifications of each physician, as well as Dr. Forehand's testimony regarding his work, and she permissibly found Dr. Forehand to be well-

qualified in the field of pulmonary medicine, despite his lack of board-certification in this field. Decision and Order Awarding Benefits at 13, 14, 16; Employer's Exhibits 2, 4; Director's Exhibits 13, 18; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-53 (2004)(*en banc*); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003); *Trumbo*, 17 BLR 1-85.

Likewise, it was within the administrative law judge's discretion to reject the opinion of Dr. Hippensteel as unreasoned, as the administrative law judge rationally found that Dr. Hippensteel's credibility was undermined when he attributed claimant's hypoxemia to cardiac disease in the absence of a finding of heart disease by Dr. Piriz, claimant's cardiologist. Additionally, the administrative law judge found Dr. Hippensteel's credibility undermined by his failure to discuss whether claimant's condition could be due to the ventilation perfusion mismatch as found by Dr. Forehand, or to discuss the 1987 medical article regarding this subject, referenced by Dr. Forehand, or to cite to any specific medical literature supporting his belief that most of claimant's x-rays indicating 2/1 pneumoconiosis would not exhibit any respiratory impairment. As credibility determinations are within the administrative law judge's discretion, we reject employer's argument that the administrative law judge has shifted the burden of proof to employer regarding this issue, and affirm her rejection of Dr. Hippensteel's opinion. Decision and Order Awarding Benefits at 13-16; Employer's Exhibit 4; Director's Exhibit 28; *Lane*, 105 F.3d 166, 21 BLR 2-34; *Billips*, 76 F.3d 371, 20 BLR 2-130; *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986).

Similarly, the administrative law judge did not err by crediting Dr. Forehand's opinion. The administrative law judge permissibly found that Dr. Forehand's opinion was well-reasoned and that his rationale was thorough, detailed, based on all the evidence of record and well-supported by the objective evidence and a relevant medical study published in a respected medical journal. The administrative law judge was not required to find Dr. Forehand's diagnosis of total respiratory disability less persuasive in light of the differing levels of exercise required of claimant by the physicians who conducted claimant's blood gas studies. Nor was the administrative law judge required to accord less weight to Dr. Forehand's opinion because of his reliance on medical studies. Decision and Order Awarding Benefits at 13-16; Director's Exhibit 13; *Lane*, 105 F.3d 166, 21 BLR 2-34; *Billips*, 76 F.3d 371, 20 BLR 2-130; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Because substantial evidence supports the administrative law judge's findings, we affirm the award of benefits. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge