

U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601



BRB No. 16-0414 BLA

DANNY HOLLAND)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LESLIE RESOURCES, INCORPORATED)	
)	
and)	
)	
SECURITY INSURANCE COMPANY OF)	DATE ISSUED: 04/26/2017
HARTFORD)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Asher, Kentucky, for claimant.

John C. Morton and Austin P. Vowels (Morton Law LLC), Henderson, Kentucky, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2012-BLA-5932) of Administrative Law Judge Christopher Larsen (the administrative law judge) rendered on

a subsequent claim¹ filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited claimant with 12.8 years of coal mine employment, accepted employer's concession that it is the properly designated responsible operator, and adjudicated this claim, filed on September 17, 2010, pursuant to the regulations contained in 20 C.F.R. Parts 718 and 725. The administrative law judge found that the new pathology evidence established clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, therefore, established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c)(3).² Considering the merits of the claim, however, the administrative law judge found that the evidence was insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2) or disability causation pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's determination that the x-ray and medical opinion evidence is insufficient to establish the existence of pneumoconiosis. Claimant also argues that the administrative law judge erred in finding that he is not totally disabled. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.³

¹ Claimant's initial claim for benefits, filed on July 24, 2002, was denied by Administrative Law Judge Daniel F. Solomon because claimant failed to establish pneumoconiosis and total respiratory disability. The Board affirmed Judge Solomon's finding that pneumoconiosis was not established, and affirmed the denial of benefits. *Holland v. Leslie Resources, Inc.*, BRB No. 06-0643 BLA (Feb. 28, 2007)(McGranery, J., concurring)(unpub.).

² Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3).

³ We affirm, as unchallenged on appeal, the administrative law judge's determination that claimant established 12.8 years of coal mine employment, the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c)(3). See *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 rational, supported by substantial evidence, and in accordance with applicable law.⁴ 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 establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 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 an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Although claimant challenges the administrative law judge's findings on the issues of pneumoconiosis and total respiratory disability, claimant has not specifically challenged the administrative law judge's finding that the medical opinion evidence failed to establish disability causation at 20 C.F.R. §718.204(c), an essential element of entitlement. In finding that the evidence failed to establish disability causation, the administrative law judge evaluated the medical opinions of Drs. Simpao, Rasmussen and Jarboe. Dr. Simpao determined, based upon an October 8, 2002 examination of claimant, that claimant's "multiple years of coal dust exposure [were] medically significant in his pulmonary impairment." Director's Exhibit 12. Dr. Rasmussen examined claimant on December 12, 2011 and diagnosed "COPD [chronic obstructive pulmonary disease]/[e]mphysema." Director's Exhibit 13. Dr. Rasmussen determined that claimant has a totally disabling lung disease and that his "coal mine dust contributes even if minimally." *Id.* Dr. Jarboe examined claimant on November 11, 2002 and concluded that claimant's mild respiratory impairment is due to cigarette smoking and asthma. Director's Exhibit 14. The administrative law judge credited Dr. Jarboe's opinion over those of Drs. Simpao and Rasmussen and found that even if claimant had established a totally disabling respiratory impairment, he failed to meet his burden to establish that pneumoconiosis was a substantially contributing cause of his impairment. Decision and Order at 11-12; *see* 20 C.F.R. §718.204(c)(1).

We hold that the administrative law judge rationally accorded little weight to Dr. Simpao's opinion, finding it conclusory because the physician "offered no rationale or

⁴ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 1, 3.

support for his conclusion.” Decision and Order 12; *see Peabody Coal Co. v. Groves*, 277 F.3d 829, 835-36, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003), *citing Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983). Further, the administrative law judge permissibly found that Dr. Rasmussen’s opinion that claimant’s “pneumoconiosis is a contributor even if only minimally (disabling chronic lung disease)” was insufficient to satisfy the regulatory standard at 20 C.F.R. §718.204(c) to establish disability causation. Decision and Order at 12; *see Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 599-600, 25 BLR 2-615, 2-624-25 (6th Cir. 2014). As Dr. Jarboe did not attribute claimant’s impairment to pneumoconiosis, the administrative law judge permissibly concluded that claimant failed to meet his burden of proof to establish disability causation pursuant to Section 718.204(c). Decision and Order at 12; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985). Because it is supported by substantial evidence, we affirm the administrative law judge’s finding. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 282, 24 BLR 2-269, 2-279 (4th Cir. 2010); *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

Since claimant failed to establish disability causation, an essential element of entitlement, we affirm the administrative law judge’s denial of benefits and need not reach claimant’s arguments on the issues of pneumoconiosis and total respiratory disability. *See Anderson*, 12 BLR at 1-112.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge