

BRB No. 05-0142 BLA

THOMAS J. ELICK)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LEHIGH VALLEY ANTHRACITE/ PAGNOTTI ENTERPRISES)	DATE ISSUED: 08/12/2005
)	
and)	
)	
STATE WORKERS INSURANCE FUND (PA)))	
)	
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 of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Harry T. Coleman, Scranton, Pennsylvania, for claimant.

Estelle Kokales (Marshall, Dennehey, Warner, Coleman & Goggin), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-5147) of Administrative Law Judge Robert D. Kaplan 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 sixteen and one-half

years of coal mine employment and found the existence of pneumoconiosis arising out of coal mine employment established pursuant to the parties' stipulations. 20 C.F.R. §§718.202(a) and 718.203. Decision and Order at 2-3; Hearing Transcript at 7. Based on the date of filing, the administrative law judge considered entitlement pursuant to the provisions of 20 C.F.R. Part 718,¹ and concluded that the evidence of record did not establish the presence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §§718.204(b)(2)(i)-(iv). Decision and Order at 3-6. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in discounting the opinion of claimant's treating physician stating that claimant is totally disabled due to pneumoconiosis. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.²

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). 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*).

Pursuant to Section 718.204(b)(2)(iv), claimant contends that the administrative law

¹ Claimant filed his claim for benefits on December 19, 2002, which was denied by the district director. Director's Exhibits 2, 26. Claimant subsequently requested a hearing before the Office of Administrative Law Judges. Director's Exhibit 27.

² As the administrative law judge's length of coal mine employment determination and his findings pursuant to 20 C.F.R. §§718.202(a), 718.203, and 718.204(b)(2)(i)-(iii) are unchallenged on appeal, they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

judge erred in failing to accord appropriate weight to the opinion of Dr. Decker, the miner's treating physician, stating that claimant suffers from a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. Claimant's Brief at 3-5. We do not find merit in claimant's argument. An administrative law judge is not required to accord determinative weight to a medical opinion solely because it is offered by a treating physician.³ See 20 C.F.R. §718.104(d); *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-114 (3d Cir. 1997); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994). To the contrary, an administrative law judge must determine the weight to be accorded a treating physician's opinion "based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5).

In the case at bar, the administrative law judge applied this standard and reasonably found that Dr. Decker's opinion was deficient in reasoning and documentation because it was not well supported by objective data. He noted that Dr. Decker did not administer or rely upon any pulmonary function or arterial blood gas studies in rendering his opinion that claimant is totally disabled.⁴ See 20 C.F.R. §718.104(d)(5); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986). By contrast, the administrative law judge found that Drs. Talati and Fino opined that claimant is not totally disabled, in reports that were documented by medical evidence and were well reasoned. Substantial evidence supports the administrative law judge's permissible credibility determinations. See *Kertesz*, 788 F.2d at 163, 9 BLR at 2-8. Consequently, we reject claimant's allegation of error in the administrative law judge's decision to accord less weight to the opinion of claimant's treating physician, and we affirm the administrative law judge's finding pursuant to Section 718.204(b)(2)(iv).

Because claimant did not establish that he is totally disabled pursuant to Section 718.204(b)(2), a necessary element of entitlement under Part 718, we affirm the administrative law judge's denial of benefits. *Trent*, 11 BLR at 1-27.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as claimant was employed in the coal mine industry in Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 3, 4.

⁴ In actuality, Dr. Decker's opinion does not reference any objective data. Claimant's Exhibit 1.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge