BRB No. 02-0397 BLA

HOWARD COPLEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BUFFALO MINING COMPANY	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
and	)	
	)	
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 John C. Holmes, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle), Pineville, West Virginia, for claimant.

Douglas A. Smoot and Kathy L. Snyder (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

Rita Roppolo (Eugene Scalia, Acting 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: SMITH, McGRANERY, and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (95-BLA-0825) of Administrative Law Judge John C. Holmes denying benefits on a duplicate 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). This case is before the Board for the fourth time.

In the original Decision and Order, issued on January 26, 1996, the administrative law judge credited claimant with twenty-seven years of coal mine employment and adjudicated the claim pursuant to the regulations contained in 20 C.F.R. Part 718 (2000). The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (a)(4) and 718.203(b) (2000). The administrative law judge also found the evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). Accordingly, the administrative law judge awarded benefits to commence as of March 1, 1994. In response to employer's appeal, the Board affirmed the administrative law judge's finding of total disability. However, the Board vacated the administrative law judge's findings of the existence of pneumoconiosis and disability due to pneumoconiosis, and remanded the case for further consideration. *Copley v. Buffalo Mining Co.*, BRB No. 96-0706 BLA (Sept. 27, 1996)(unpub.).

On the first remand, in a Decision and Order issued on January 27, 1997, the administrative law judge found the evidence sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). Further, although the

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[1] Claimant's initial claim was filed on July 7, 1973. Director's Exhibit 33. This claim was denied by the Department of Labor on April 8, 1980. *Id.* Because claimant did not pursue this claim any further, the denial became final. Claimant's most recent claim was filed on March 30, 1994. Director's Exhibit 1.

[2] The Department of Labor has 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, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3] The administrative law judge observed, "[t]he initial claim was denied on multiple grounds, including the [c]laimant's failure to establish total disability." Decision and Order on Remand at 2 n.1. The administrative law judge stated, "[s]ince the Claimant has established that element, a material change of condition has clearly been established." *Id.*

administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3) (2000), he found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b) (2000). In addition, the administrative law judge found the evidence sufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.204(b) and (c) (2000). Accordingly, the administrative law judge again awarded benefits.

In disposing of employer's appeal, the Board affirmed the administrative law judge's findings: that pneumoconiosis was not established by x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1) (2000), but was established by medical opinion evidence pursuant to 20 C.F.R. § 718.202(a)(4) (2000); that pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b) (2000); and that total disability due to pneumoconiosis was established pursuant to 20 C.F.R. §718.204(b) (2000). *Copley v. Buffalo Mining Co.*, BRB No. 97-0789 BLA (Feb. 17, 1998) (unpub.). Employer appealed the Board's decision to the United States Court of Appeals for the Fourth Circuit, which vacated the administrative law judge's findings of pneumoconiosis and disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(4) and 718.204(b) (2000), and remanded the case to the administrative law judge to reweigh the evidence. *Buffalo Mining Co. v. Copley*, 166 F.3d 331 (table) (1998).

On the second remand, in a Decision and Order issued on August 31, 1999, the administrative law judge found, in effect, that the Fourth Circuit's decision constituted a reversal of his prior findings of pneumoconiosis and disability due to pneumoconiosis. Accordingly, the administrative law judge denied benefits. On claimant's appeal, the Board ruled that the administrative law judge did not follow the Fourth Circuit's explicit instructions to reweigh the evidence and provide an explanation for his findings on remand. Therefore the Board vacated the administrative law judge's decision denying benefits and again remanded the case to the administrative law judge to reconsider the claim. *Copley v. Buffalo Mining Co*., BRB No. 99-1237 BLA (Nov. 17, 2000) (unpub.).

On the most recent remand, the administrative law judge again found claimant had failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and denied benefits. On appeal, claimant argues that the administrative law judge erred in finding claimant failed to establish pneumoconiosis, and erred in failing to address the cause of claimant's totally disabling respiratory impairment. On the other hand, employer argues the administrative law judge's finding of no pneumoconiosis is rational and supported by substantial evidence. 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359(1965).

The only issue remaining with regard to pneumoconiosis is whether claimant established its existence by medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4). Only two physician's reports – those of Drs. Rasmussen and Ranavaya – found that claimant had pneumoconiosis. The administrative law judge found Dr. Ranavaya – one of two physicians who examined claimant – had not demonstrated expertise in the field, and his opinion was not well reasoned and documented because "[t]he only explanation for his diagnosis of pneumoconiosis is the positive x-ray interpretation and the Claimant's history of coal mine employment." Decision and Order at 11. He noted that Dr. Rasmussen (who did not examine claimant) reached his conclusion regarding pneumoconiosis "based partly on [claimant's] last positive x-ray reading. . . " and gave Dr. Rasmussen's opinion "significant but less than full weight, even though he is an expert in the field." *Id*. On the other hand, the administrative law judge reviewed the findings of Dr. Zaldivar (who examined claimant), as well as the findings of Drs. Castle, and Morgan – all of whom had found that claimant did not have pneumoconiosis. The administrative law judge gave those opinions "full weight" because their opinions were well reasoned and documented. *Id*. at 10-11. Claimant argues that the administrative law judge erroneously abandoned his previous findings crediting Drs. Ranavaya and Rasmussen and giving diminished weight to the opinions of Drs. Zaldivar, Castle, and Morgan. Claimant's argument lacks merit.

It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984); and to assess the evidence of record and draw his own conclusions and inferences from it, *see Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). An administrative law judge may give more weight to physicians' opinions, such as those of Drs. Zaldivar, Morgan, and Castle, which he finds based on a more thorough review of the evidence of record and better reasoned. *See Hall v. Director, OWCP*, 8 BLR 1-193 (1985). The Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge when his findings are supported by substantial evidence, *see Anderson v. Valley Camp of Utah*, *Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue*

[4] As noted above, the administrative law judge previously found claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), and the Board affirmed those findings.

Diamond Coal Co., 12 BLR 1-20 (1988).

Application of these principles to this case leads to the conclusion that the administrative law judge's findings regarding the physicians' medical opinions are supported by substantial evidence. Here, Drs. Ranavaya and Rasmussen based their findings of pneumoconiosis exclusively upon later discredited 1.0 x-ray reading(s) and claimant's work history. Thus, Dr. Ranavaya found pneumoconiosis "[b]ased on a 31 year long history of occupational exposure to dust in coal mining (29 years of which were spent underground) and radiological evidence of it." Director's Exhibit 12. Dr. Rasmussen found: "Based on this patient's long occupational dust exposure history and positive [x-ray] readings by Drs. Ranavaya, Gaziano, Pathak, Ahmed, and Aycoth, I believe it is medically reasonable to conclude that this patient does suffer from coal workers' pneumoconiosis which arose from his coal mine employment." Claimant's Exhibit 2. Drs. Ranavaya and Rasmussen cited the miner's employment history as the only other basis upon which they found pneumoconiosis. As the United States Court of Appeals for the Fourth Circuit has held in this case, a finding of pneumoconiosis cannot be based upon a lengthy coal mine employment history alone. *Buffalo Mining Co. v. Copley, supra, citing Sahara Coal Mining Co. v. Fitts*, 39 F.3d 781, 783 (7th Cir. 1994), and *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 535 (4th Cir. 1998). Therefore, we affirm the administrative law judge's finding that pneumoconiosis was not established.

[5] In his January 27, 1997 Decision and Order, the administrative law judge found the x-ray evidence did not establish the existence of pneumoconiosis.

[6] In light of this ruling, claimant's argument that the administrative law judge erred in failing to address the cause of claimant's respiratory impairment is moot.

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

SO ORDERED.

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ROY P. SMITH

Administrative Appeals Judge

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REGINA C. McGRANERY

Administrative Appeals Judge

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PETER A. GABAUER, JR.

Administrative Appeals Judge