

BRB No. 08-0407 BLA

F.R.)
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 Claimant-Petitioner)
)
 v.)
)
 BUFFALO MINING COMPANY) DATE ISSUED: 12/22/2008
)
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

F.R., Verdunville, West Virginia, *pro se*.

Francesca Tan (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (04-BLA-5778) of Administrative Law Judge Richard A. Morgan 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). This case involves a claim filed on September 23, 2002. After crediting claimant with at least twenty-one years of coal mine employment¹ the administrative law judge found that the evidence did not

¹ The record reflects that claimant's coal mine employment was in Virginia. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United

establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge also found that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a response in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176, 1-177 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are 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'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. 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*).

The administrative law judge properly found that all four pulmonary function studies of record² are non-qualifying.³ Decision and Order at 16. Consequently, we affirm the administrative law judge's finding that the pulmonary function study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).

States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

² The record contains pulmonary function studies conducted on December 12, 2002, October 27, 2003, January 26, 2004, and March 14, 2007. Director's Exhibit 13; Claimant's Exhibit 2; Employer's Exhibits 1, 3.

³ A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values, *i.e.* Appendices B and C of Part 718. A "non-qualifying" study yields values that exceed the requisite table values.

The administrative law judge accurately noted that the record contains four arterial blood gas studies conducted on December 12, 2002, October 27, 2003, July 31, 2006, and March 14, 2007. Decision and Order at 6; Director's Exhibits 12, 14; Claimant's Exhibit 3; Employer's Exhibit 1. Of these four arterial blood gas studies, the administrative law judge correctly noted that only claimant's December 12, 2002 study produced qualifying values. Decision and Order at 16. The administrative law judge accurately noted that each of the three subsequent arterial blood gas studies, including the most recent study conducted on March 14, 2007, produced non-qualifying values.⁴ *Id.* Based upon the "clear majority" of non-qualifying arterial blood gas studies, as well as the most recent non-qualifying arterial blood gas study evidence, the administrative law judge found that the arterial blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 6, 16. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the arterial blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). *See Sexton v. Southern Ohio Coal Co.*, 7 BLR 1-411, 1-412 (1984) (holding that later blood gas studies may properly be credited as more probative of a miner's present condition than earlier studies).

Because there is no evidence of record indicating that the claimant suffered from cor pulmonale with right-sided congestive heart failure, the administrative law judge properly found that claimant was precluded from establishing total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 16.

In considering whether the medical opinions established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the opinions of Drs. Zaldivar, Crisalli, Rasmussen, Hussain, and Ranavaya. The administrative law judge permissibly accorded greater weight to the opinions of Drs. Zaldivar, Crisalli, and Hussain based upon their superior qualifications.⁵ *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 14-15. The administrative law judge credited the opinions of Drs. Zaldivar and Crisalli, that claimant was not totally disabled from a

⁴ The administrative law judge also accurately noted that the only exercise blood gas study, conducted on October 27, 2003, produced non-qualifying values. Decision and Order at 16.

⁵ The administrative law judge accurately noted that Drs. Zaldivar, Crisalli, and Hussain are Board-certified pulmonary specialists. Decision and Order at 14; Claimant's Exhibit 4 at 6; Employer's Exhibits 1, 3. The administrative law judge noted that although Dr. Rasmussen was Board-certified in Internal Medicine, he was not Board-certified in Pulmonary Disease. Decision and Order at 13; Claimant's Exhibit 2. Dr. Ranavaya's qualifications are not found in the record.

pulmonary standpoint,⁶ over Dr. Hussain's contrary opinion, Claimant's Exhibit 4 at 12, because he found that their opinions were based upon more extensive documentation. Decision and Order at 15. In weighing medical reports, an administrative law judge may properly find that a doctor's opinion based on limited clinical data is entitled to less weight than conflicting reports based upon more comprehensive documentation. *See Sabett v. Director, OWCP*, 7 BLR 1-299 (1984); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge noted that while Dr. Hussain "only conducted a few tests," Drs. Zaldivar and Crisalli "reviewed and analyzed the medical reports and clinical test results obtained by several different physicians."⁷ Decision and Order at 15. The administrative law judge also credited the opinions of Drs. Zaldivar and Crisalli over that of Dr. Hussain because he found that their opinions were more consistent with the objective evidence. Decision and Order at 15. An administrative law judge may properly credit the medical opinions that he determines are better supported by the objective evidence of record. *See Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Voytovich v. Consolidation Coal Co.*, 5 BLR 1-141 (1982).

Because he found they were well-reasoned, based upon more comprehensive documentation, and more consistent with the objective evidence, the administrative law judge properly accorded greater weight to the opinions of Drs. Zaldivar and Crisalli. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

In light of our affirmance of the administrative law judge's finding that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

⁶ Dr. Zaldivar opined that, from a pulmonary standpoint, claimant was fully capable of performing his usual coal mine work. Employer's Exhibit 1. Dr. Crisalli opined that claimant did not have any pulmonary functional impairment. Employer's Exhibit 3.

⁷ The administrative law judge also noted that the tests conducted by Dr. Hussain were conducted primarily during a time when claimant was hospitalized with an acute condition. Decision and Order at 15; Claimant's Exhibit 3. Dr. Hussain relied upon test results obtained during a time when claimant was hospitalized from July 31, 2006 until August 10, 2006 for an acute exacerbation of his chronic obstructive pulmonary disease. Claimant's Exhibit 2.

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

REGINA C. McGRANERY
Administrative Appeals Judge