BRB No. 99-0294 BLA

RAY JUNIOR MATNEY	)	
	)	
Claimant- Respondent	)	
	)	
v.	)	
	)	
TRIPLE S COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

Michael F. Blair (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer/carrier.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (97-BLA-1549) of Administrative Law Judge Richard A. Morgan 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). Adjudicating this claim pursuant to 20

C.F.R. Part 718, the administrative law judge credited the parties' stipulation that claimant[1] worked in qualifying coal mine employment for twenty-six and one-half years and established the existence of pneumoconiosis. Based on claimant's concession that the evidence is insufficient to establish a totally disabling respiratory impairment, the administrative law judge found that the sole issue in this case was whether claimant established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. After weighing all of the relevant x-ray, CT scan, and medical opinion evidence, the administrative law judge found that claimant affirmatively established the existence of complicated pneumoconiosis, and therefore, established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erroneously found that claimant suffers from complicated pneumoconiosis pursuant to Section 718.304. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter, indicating that he will not participate in this appeal.[2]

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 the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

[1] Claimant, Ray Junior Matney, filed his application for benefits on March 25, 1996. Director's Exhibit 1.

[2] Inasmuch as the parties do not challenge the administrative law judge's determination under Section 718.304(b), this finding is affirmed. *See Skrack v. Island Creek Coal Co.,* 6 BLR 1-710 (1983); Decision and Order at 15.

Employer argues that with respect to the April 10, 1998 x-ray film, the administrative law judge relied upon a numerical "head count" as a basis to credit the x-ray readings establishing the presence of complicated pneumoconiosis. Contrary to employer's contention, the administrative law judge did not engage in a bare quantitative assessment of the x-ray evidence, but also conducted a qualitative analysis of the evidence. *See Adkins v. Director, OWCP*, 958 F.2d 49, 51-52, 16 BLR 2-61, 2-64-65 (4th Cir. 1992); *see also Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995). The administrative law judge properly considered the radiological qualifications of the ten physicians who read the April 10, 1998 chest x-ray and permissibly found that the seven interpretations of Drs. Ahmed, Aycoth, Cappiello, Westerfield, Siner, Mathur, and Pathak, Board-certified radiologists and also B-readers, who found the existence of complicated pneumoconiosis, outweighed the findings of no large opacities of Drs. Scott, Wheeler and Fino.[3] Decision and Order at 14; Claimant's Exhibits 1, 2; Employer's Exhibits 26-28. Inasmuch as the administrative law judge did not violate *Adkins's* stricture against resolving conflicts in the x-ray evidence by relying solely on numerical superiority, we reject employer's argument.

With respect to the x-ray film dated April 21, 1998, employer contends that the administrative law judge improperly found the interpretations of Drs. Fino, Wheeler, and Scott to be equivocal. We disagree. Although he noted that Drs. Wheeler and Scott diagnosed tuberculosis and calcified granulomata, the administrative law judge, within a proper exercise of his discretion, found their interpretations of the April 21, 1998 x-ray film equivocal because these physicians stated that a component of coal workers' pneumoconiosis or silicosis "may be," "could be," or "possibly" was present, despite the parties' stipulation and the preponderance of the medical evidence affirmatively establishing the existence of coal workers' pneumoconiosis. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764, 21 BLR 2-589, 2-606 (4th Cir. 1999)("both the meaning of an ambiguous word or phrase and the weight to give the testimony of an uncertain witness are questions for the trier of fact"); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order at 15; Employer's Exhibits 12, 14. Inasmuch as the administrative law judge's weighing of the x-ray

[3] Drs. Wheeler and Scott are Board-certified radiologists and also B-readers whereas Dr. Fino's sole radiological qualification is his B-reader status. Employer's Exhibits 26-28.

evidence is rational and supported by substantial evidence, we reject employer's argument. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*).

Employer argues that the administrative law judge failed to adequately explain his determination that the opinions of Drs. Wheeler and Scott, regarding the CT scan taken on January 2, 1998, were less credible than the opinion of Dr. Pathak. Employer's contention lacks merit. The administrative law judge reasonably found equivocal the opinions of Drs. Wheeler and Scott that there "may be" evidence of silicosis or coal workers' pneumoconiosis. He then found the credibility of these opinions, uncertain as to the existence of even simple pneumoconiosis, to be significantly undermined by the parties' stipulation to the existence of pneumoconiosis which was supported by a majority of the medical evidence. *See Mays*, *supra*; *Justice*, *supra*; *Campbell*, *supra*; Decision and Order at 16; Employer's Exhibits 21, 24. The administrative law judge permissibly found further that the equivocal opinions of Drs. Wheeler and Scott[4] were outweighed by that of Dr. Pathak, a British Board-certified radiologist and B-reader, who opined that the January 2, 1998 CT scan demonstrated the existence of complicated pneumoconiosis category B. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); Decision and Order at 16; Claimant's Exhibit 1. Inasmuch as the administrative law judge provided ample rationale for his discrediting of the opinions of Drs. Wheeler and Scott, we affirm the administrative law judge's reliance on Dr. Pathak's opinion and his determination that the January 2, 1998 CT scan established the existence of progressive massive fibrosis under Section 718.304(c).

Employer additionally contends that the administrative law judge erroneously cited Employer's Exhibits one to four as being the report of Dr. Hutchins dated January 5, 1998, a document that is not contained in the record. Alternatively, employer urges that Employer's Exhibits one to four consist of Dr. Fino's report dated May 22, 1998, which the administrative law judge failed to address in his evaluation of the evidence. Contrary to employer's contentions, however, the administrative law judge correctly found that Dr. Hutchins rendered a report dated January 5, 1998, that is contained in the evidence of record at Employer's Exhibit 4. *See* Decision and Order at 16. Furthermore, Dr. Fino's report, which is dated May

[4] Contrary to employer's contention, the administrative law judge had previously acknowledged the dual radiological qualifications of Drs. Wheeler and Scott in his discussion of the x-ray evidence. *See* Decision and Order at 15.

5, 1998 and not May 22, 1998, was generated from his pulmonary evaluation of claimant on April 21, 1998, and was adequately discussed by the administrative law judge in his analysis of the medical opinion evidence. Decision and Order at 16-17; Employer's Exhibit 1. We, therefore, reject employer's arguments.

Employer finally contends that the administrative law judge erroneously credited Dr. Jabour's opinion diagnosing the existence of complicated pneumoconiosis because he conceded that claimant's pulmonary function studies exhibited reversible airways disease, a condition inconsistent with coal workers' pneumoconiosis, and, because he had no access to claimant's prior medical records, he could not offer an opinion as to whether claimant suffered from tuberculosis in the past. The administrative law judge, within a proper exercise of his discretion, found Dr. Jabour's opinion entitled to determinative weight because of his demonstrated pulmonary expertise,[4] treating physician status, multiple examinations of claimant, particularly in the year in which the complicated pneumoconiosis developed, and his consideration and dismissal of alternative diagnoses for the mass in claimant's right upper lung. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1998); *Underwood v. Elkay Mining, Inc.,* 105 F.3d 946, 951, 21 BLR 2-23, 2-32 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 1989); Decision and Order at 17. Because an administrative law judge need not accept the opinion or theory of any given medical witness and may properly weigh the medical evidence and draw his/her own conclusions, *see Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Zbosnik v. Badger Coal Co.*, 759 F.2d 1187, 7 BLR 2-202 (4th Cir. 1985), we affirm the administrative law judge's determination that Dr. Jabour's opinion was entitled to determinative weight. We, likewise, affirm the administrative law judge's weighing of all of the relevant evidence and his determination that because claimant established the existence of complicated pneumoconiosis, he established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304 inasmuch as this finding is rational and supported by substantial evidence. *See Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243-244, BLR (4th Cir. 1999); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Melnick*, *supra*.

[4] Dr. Jabour is Board-certified in internal medicine and the subspecialty of pulmonary medicine. Claimant's Exhibit 4 at 4.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge