BRB No. 98-1589 BLA

TERRY V. DEVALL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:
KINGWOOD COAL COMPANY	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	DECISION AND ORDER
Party-in-Interest		

Appeal of the Decision and Order - Awarding Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

C. Patrick Carrick (Law Office of C. Patrick Carrick), Morgantown, West Virginia, for claimant.

William S. Mattingly (Jackson & Kelly), Morgantown, West Virginia, for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (97-BLA-1214) of Administrative Law Judge Daniel L. Leland 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 twenty-five years and one month of coal mine employment and

adjudicated the claim pursuant to 20 C.F.R. Part 718, based on claimant's July 26, 1996 filing date. Initially, the administrative law judge accepted employer's concession regarding the existence of pneumoconiosis arising out of coal mine employment and total respiratory disability. 20 C.F.R. §§718.202(a), 718.203(b), 718.204(c). Weighing the medical evidence of record pursuant to 20 C.F.R. §718.204(b), the administrative law judge found the evidence sufficient to establish that pneumoconiosis was a contributing cause of claimant's total respiratory disability. Accordingly, the administrative law judge awarded benefits and determined that the date from which benefits commence was July 1, 1996.

On appeal, employer challenges the administrative law judge's award of benefits, contending that the administrative law judge erred in finding the medical evidence of record sufficient to establish that pneumoconiosis was a contributing cause of claimant's total respiratory disability pursuant to Section 718.204(b). In response, claimant urges affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.[1]

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 applicable law. 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).

Pursuant to Section 718.204(b), in this case arising within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, claimant must prove by a preponderance of the evidence that his pneumoconiosis was at least a contributing

[1] The parties do not challenge the administrative law judge's decision to credit claimant with twenty-five years and one month of coal mine employment or his acceptance of employer's concession of the existence of pneumoconiosis arising out of coal mine employment and the existence of total respiratory disability, 20 C.F.R. §§718.202(a), 718.203(b), 718.204(c). Therefore, these findings are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

cause of his totally disabling respiratory or pulmonary impairment, *see Hobbs v. Clinchfield Coal Co.* [*Hobbs II*], 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

After consideration of the administrative law judge's Decision and Order, the issues raised on appeal and the relevant evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that the preponderance of the evidence established that claimant's pneumoconiosis was a contributing cause of his total respiratory disability pursuant to Section 718.204(b). *Hobbs II, supra; Robinson, supra*. In evaluating the medical opinions at Section 718.204(b), the administrative law judge accurately reviewed the physicians' qualifications, conclusions and underlying documentation. Decision and Order at 4-5. In weighing the medical evidence, the administrative law judge specifically addressed and rejected employer's argument that the medical opinions of Drs. Jaworski and Rasmussen were equivocal and, thus, entitled to little weight. *See* Decision and Order at 6. Within a reasonable exercise of his discretion, the administrative law judge found that these medical opinions were not equivocal inasmuch as both Dr. Jaworski and Dr. Rasmussen, while stating that they could not state with certainty the percentage of contribution, nonetheless, opined definitively that pneumoconiosis was a contributing cause of claimant's total respiratory disability, with Dr. Rasmussen opining that it was a major contributing cause. Decision and Order at 6; Director's Exhibit 9; Claimant's Exhibits 1, 2; Employer's Exhibit 8; *see Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). Moreover, contrary to employer's contention, the administrative law judge reasonably found that the medical opinions of Drs. Jaworski and Rasmussen were well reasoned, based on his determination that the physicians provided a sufficient rationale for their diagnoses regarding the cause of claimant's total disability. Decision and Order at 6; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *see also Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989).

While employer asserts that the contrary opinion of Dr. Renn, that pneumoconiosis was not a contributing cause of claimant's total disability, is better reasoned than the opinions of Drs. Jaworski and Rasmussen because it is based on more sophisticated evidence, an administrative law judge does not have to accept the opinion or theory of any given medical witness, but may weigh the evidence and draw his own conclusions, and the Board is not empowered to reweigh the evidence. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, since the administrative law judge considered the three medical opinions of record and found

that the opinions of Drs. Jaworski and Rasmussen were reasoned and credible opinions, we affirm his finding that the preponderance of the relevant evidence is sufficient to meet claimant's burden pursuant to Section 718.204(b). 20 C.F.R. §718.204(b); *Hobbs II, supra; Robinson, supra; see Calfee v. Director, OWCP*, 8 BLR 1-7 (1985). Consequently, we affirm the administrative law judge's finding that the evidence was sufficient to establish entitlement to benefits pursuant to 20 C.F.R. Part 718.[2] *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[2] Inasmuch as employer does not challenge the administrative law judge's determination of July 1996 as the date from which benefits commence, *see* 20 C.F.R. §725.503(b), this finding is affirmed. *See Skrack*, *supra*.