

BRB No. 99-0465 BLA

ELMER W. JOHNSON)
)
 Claimant-Petitioner)
)
 v.)
)
 NEW HORIZONS COAL,) DATE ISSUED:
 INCORPORATED)
)
 and)
)
 HARTFORD ACCIDENT & INDEMNITY)
 COMPANY)
)
 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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Ronald C. Cox (Johnnie L. Turner, P.S.C.), Harlan, Kentucky, for claimant.

David L. Murphy (Clark, Ward & Cave), Louisville, Kentucky, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-0504) of Administrative Law Judge Rudolf L. Jansen 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).¹ After accepting the parties' stipulation of seventeen years of coal mine employment, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied. On appeal, claimant challenges the administrative law judge's findings under 20 C.F.R. §§718.202(a)(1), (a)(4), 718.204(c)(1), (c)(4) and 718.204(b). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to 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 applicable law, they are binding upon this Board, and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement of benefits under 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that his pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203 and 718.204. Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1(1986)(*en banc*).

¹This claim was filed on February 14, 1997. Director's Exhibit 1.

²Inasmuch as the administrative law judge's length of coal mine employment finding and his findings at 20 C.F.R. §§718.202(a)(2), (a)(3), and 718.204(c)(2) and (c)(3) are not challenged on appeal, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant challenges the administrative law judge's finding that the evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). Whereas Drs. Dahhan, Broudy, Lockey, Vuskovich, and Lane found that claimant's condition was caused by factors unrelated to coal dust exposure, Director's Exhibits 23, 27; Employer's Exhibits 1, 3, 5, 6, 9, Drs. Weiler and Baker found that claimant's total disability was due to coal dust exposure, Director's Exhibits 8, 26; Employer's Exhibit 7. The administrative law judge properly accorded greater weight to the opinions of Drs. Dahhan³ and Lockey than to the contrary opinions of Drs. Baker and Weiler because of their superior qualifications.⁴ *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order 16. The administrative law judge also properly accorded greater weight to the opinions of Drs. Dahhan, Broudy, Lockey, Vuskovich and Lane than to the contrary opinion of Dr. Weiler because he found their opinions to be better reasoned.⁵ *Clark v. Karst-Robbins Coal*

³The administrative law judge properly found that Dr. Dahhan is also claimant's treating physician. Decision and Order at 16; Employer's Exhibit 1.

⁴The administrative law judge stated that Drs. Dahhan and Lockey "are Board [c]ertified in pulmonary medicine." Decision and Order at 16; Employers' Exhibits 1, 5. The record does not contain the credentials of Drs. Weiler and Baker.

⁵The administrative law judge stated that the opinions of Drs. Dahhan, Broudy, Lockey, Vuskovich and Lane "contain the data and observations relied upon in reaching their diagnoses and the diagnoses logically flow from this data." Decision and Order at 16; Director's Exhibits 23, 27; Employer's Exhibits 1, 5, 6, 9. In contrast, the administrative law judge stated that Dr. Weiler did not consider claimant's extensive smoking history or demonstrate that he was aware of the extent of claimant's coal dust exposure. Decision and Order at 16; Director's Exhibit 26; Employer's Exhibit 7.

Co., 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

Claimant asserts that the opinion of Dr. Weiler is sufficient to invoke the presumption of total disability due to pneumoconiosis since “a single medical opinion may be sufficient for invoking the presumption of total disability.” Claimant’s Brief at 8. Inasmuch as claimant filed his claim for benefits after March 31, 1980, Director’s Exhibit 1, the administrative law judge properly applied the regulations contained in 20 C.F.R. Part 718, rather than the regulations contained in 20 C.F.R. Part 727, see 20 C.F.R. §§718.1(b) and 718.2. Thus, we reject claimant’s assertion that it was error not to invoke the presumption of total disability due to pneumoconiosis. 20 C.F.R. §727.203(a).

Claimant also asserts that the administrative law judge erred by not according determinative weight to the opinion of Dr. Weiler based on his status as claimant’s treating physician. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that the opinions of treating physicians are entitled to greater weight than those of nontreating physicians. *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). The Sixth Circuit has also indicated, however, that this principle does not alter the administrative law judge’s duty, as fact-finder, to evaluate the credibility of the treating physician’s opinion. *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). In the present case, although the administrative law judge acknowledged Dr. Weiler’s status as claimant’s treating physician, the administrative law judge rationally discounted Dr. Weiler’s opinion because he found it not to be as well reasoned as the opinions of Drs. Dahhan, Broudy, Lockey, Vuskovich and Lane. *Clark, supra*; *Fields, supra*; *Fuller, supra*; Decision and Order at 16. Therefore, we reject claimant’s assertion that the administrative law judge erred by not according determinative weight to the opinion of Dr. Weiler based on his status as claimant’s treating physician. Moreover, we hold that substantial evidence supports the administrative law judge’s finding that the evidence is insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Adams v. Director, OWCP*, 88 6 F.2d 818, 13 BLR 2-52 (6th Cir. 1989).

Inasmuch as the administrative law judge properly found that claimant failed to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), a requisite element of entitlement, an award of benefits under 20 C.F.R. Part 718 is precluded. *Anderson v Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Perry, supra*. Therefore, we need not consider claimant’s arguments under 20 C.F.R. §§718.202(a)(1), (a)(4) and 718.204(c)(1) and (c)(4).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge