BRB No. 06-0611 BLA

ROBERT G. HALL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
RANGER FUEL CORPORATION	)	DATE ISSUED: 02/27/2007
	)	
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 – Denying Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Robert G. Hall, Beaver, West Virginia, *pro se*.

Christopher M. Hunter (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denying Benefits (04-BLA-5868) of Administrative Law Judge Michael P. Lesniak (the administrative law judge) on a subsequent 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] The administrative law judge concluded that the newly submitted evidence of

[1] Claimant has filed four prior claims. Director's Exhibits 1, 2, 3, and 4. In the claim preceding this claim, it was found that total disability was established, but the claim was denied because claimant failed to establish the existence of pneumoconiosis. Director's Exhibit 4. Claimant then filed the instant, subsequent claim on August 15, 2002. Director's

record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), the element of entitlement previously adjudicated against claimant, and was, therefore, insufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. The administrative law judge also found that because the existence of pneumoconiosis was not established, claimant could not establish that pneumoconiosis arose out of coal mine employment or that it was totally disabling. 20 C.F.R. §§718.203(b), 718.204(c). Benefits were, accordingly, denied.

On appeal, claimant generally challenges the administrative law judge's Decision and Order denying benefits. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a response brief.

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 law. 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).

The administrative law judge found that the newly submitted x-ray interpretation evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge found that because Dr. Patel, a dually-qualified reader, read an October 1, 2002 x-ray as positive for pneumoconiosis, Director's Exhibit 15, and this same film was reread by Dr. Wiot, also a dually-qualified reader, as negative for pneumoconiosis. Director's Exhibit 16, the readings of this film were in equipoise. The administrative law judge found that a subsequent x-ray, taken November 26, 2003, was interpreted as negative for pneumoconiosis by Dr. Zalvidar, a B reader, Employer's Exhibit 1, while Dr. Willis, a dually-qualified reader, read an x-ray, taken March 1, 2004, as negative for pneumoconiosis. Employer's Exhibit 2. The administrative law judge, therefore, properly found that because the majority of the x-ray readings by readers with superior qualifications was negative, the new x-ray evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Decision and Order at 11; *see Worhach v. Director, OWCP*, 17 BLR 1- 105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc)*;

Exhibit 6.

McMath v. Director, OWCP, 12 BLR 1-6 (1988); Decision and Order at 11. We affirm, therefore, the administrative law judge's finding that the newly submitted x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1).

The administrative law judge also correctly found that, because the record did not contain any biopsy or autopsy evidence, the existence of pneumoconiosis could not be established pursuant to Section 718.202(a)(2), and that none of the presumptions contained in Section 718.202(a)(3) was applicable to the instant claim, 20 C.F.R. §§718.304, 718.305, 718.306. 20 C.F.R. §718.202(a)(2), (a)(3); Decision and Order at 10.

Finally, the administrative law judge found that the medical opinion evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). The administrative law judge permissibly found that while Dr. Mullins diagnosed the existence of pneumoconiosis by x-ray evidence and chronic obstructive pulmonary disease due to coal mine employment, the opinion was entitled to little weight as the x-ray evidence as a whole failed to establish the existence of pneumoconiosis, and the doctor failed to explain her basis for finding that coal mine employment contributed to claimant's chronic obstructive pulmonary disease. *See Island Creek Coal Co. v. Compton*, 211 F. 3d 203, 22 BLR 2-162 (4th Cir. 2000); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR at 1-155; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*), *aff'd sub nom. Director, OWCP v. Cargo Mining Co.*, Nos.88-3531, 88-3578 (6th Cir. May 11, 1989)(unpub.); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Cooper v. Director, OWCP*, 11 BLR 1-95 (1988)(Ramsey, CJ, concurring); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 12.

The administrative law judge also permissibly accorded little weight to the opinion of Dr. Dababnah, that claimant had pneumoconiosis, despite Dr. Dababnah's status as claimant's treating physician, because he found that it was not well-reasoned and not well-documented. The administrative law judge observed that Dr. Dababnah failed to state how often he had treated claimant and failed to identify what testing supported his diagnosis. Moreover, the administrative law judge found Dr. Dababnah's findings of "acute attacks of black lung and COPD" to be at odds with the Act's definition of pneumoconiosis as a chronic and progressive disease. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994), *Trumbo*, 17 BLR 1-85; *Clark*, 12 BLR 1-149; *Tackett*, 12 BLR 1-11; *McMath*, 12 BLR 1-6; *see also Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-623 (6th Cir. 2003); Decision and Order at 11-12.

Further, the administrative law judge permissibly found the opinion of Dr. Rasmussen, that coal mine employment contributed significantly to claimant's respiratory impairment, outweighed by the contrary well-documented and well-reasoned opinions of Drs. Crisalli and

Zaldivar, who disagreed with the medical reasoning and literature used by Dr. Rasmussen to support his opinion. *See Hicks*, 138 F.3d 524, 21 BLR 2-323; *Trumbo*, 17 BLR at 1-85; *Clark*, 12 BLR at 1-155 (1989)(*en banc*); *Cooper*, 11 BLR at 1-98. In addition, the administrative law judge properly found that the opinions of Drs. Crisalli and Zalvidar were better supported by the credible medical evidence of record, *see Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984), and that all of the relevant new evidence, when weighed together, *i.e.*, medical opinions and x-ray readings, failed to establish the existence of pneumoconiosis. 20 C.F.R. §§718.201; 718.202(a)(1)-(a)(4); *Compton*, 211 F.3d 203, 22 BLR 2-162. We affirm, therefore, the administrative law judge's finding that the new evidence failed to establish the existence of pneumoconiosis at Section 718.202(a), and failed to establish a change in an applicable condition of entitlement at Section 725.309(d).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge