BRB No. 99-0392 BLA

SAMMY CAUSEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, INCORPORATED	)	DATE ISSUED:
C/O TRANSCO COAL COMPANY	)	
	)	
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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Paul E. Jones (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-587) of Administrative Law Judge Thomas F. Phalen, Jr. 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). The administrative law judge found at least thirteen years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 4, 7. After determining that the instant claim was a duplicate claim,[1] the administrative law

[1]Claimant filed his initial claim for benefits on July 7, 1979, which was denied by the Department of Labor on November 14, 1979. Director's Exhibit 21. Claimant

judge found that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Consequently, the administrative law judge concluded that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309. Accordingly, benefits were denied. On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.204(c)(4). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.[2]

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 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).

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subsequently filed a second claim on October 18, 1991, which was finally denied on January 31, 1995, because claimant failed to establish the existence of pneumoconiosis arising out of coal mine employment and total disability due to pneumoconiosis. Director's Exhibit 22. Claimant filed his most recent claim on May 9, 1997. Director's Exhibit 1.

[2]The administrative law judge's length of coal mine employment determination and his findings pursuant to 20 C.F.R. §§718.202(a)(2)-(3) and 718.204(c)(1)-(2) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-616 (1983).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any 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*). In addition, the United States Court of Appeals for the Sixth Circuit has held that in assessing whether the evidence is sufficient to establish a material change in conditions pursuant to Section 725.309, an administrative law judge must consider all of the new evidence, favorable and unfavorable to claimant, and determine whether claimant has proven at least one of the elements of entitlement previously adjudicated against him.[3] *See Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. Considering the newly submitted evidence to determine if a material change in conditions was established, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Decision and Order at 9-10. The administrative law judge properly noted that claimant submitted two x-rays in support of his current application for benefits. Decision and Order at 9. The x-ray dated October 20, 1997 was interpreted by Dr. Broudy as negative. Director's Exhibit 19. The administrative law judge found that only the June 5, 1997 x-ray interpretation by Dr. Baker, a B-reader, was positive for the existence of pneumoconiosis. Decision and Order at 9; Director's Exhibit 11. The administrative law judge further found that Dr. Baker's positive interpretation was reread by Drs. Sargent, Barrett, Wiot and Spitz, who are B-readers and Board-certified radiologists, as negative for the existence of pneumoconiosis. Decision and Order at 9; Director's Exhibits 9, 10; Employer's Exhibits 6, 7. The administrative law judge then accorded greater weight to the negative interpretations and concluded that the x-ray evidence was insufficient to establish the existence of pneumoconiosis. Decision and Order at 9. Since the administrative law judge rationally accorded more weight to the negative x-ray interpretations by the dually-qualified physicians, substantial evidence supports the administrative law judge's finding that the newly

[3]This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was employed in the coal mine industry in the State of Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

submitted evidence is insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1). *See* Director's Exhibits 9, 10, 11, 19; Employer's Exhibits 6, 7; Decision and Order at 9-10; *Staton v. Norfolk & Western Railroad Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988)(*en banc*); *Sheckler v. Clinchfield Coal Co*. 7 BLR 1-128 (1984).

In addressing the existence of pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge considered the entirety of the newly submitted medical opinions of Drs. Baker, Broudy, Branscomb and Fino. Director's Exhibits 7, 19; Employer's Exhibits 2, 3. The administrative law judge properly accorded determinative weight to the opinions of Drs. Broudy, Branscomb and Fino, that claimant does not suffer from pneumoconiosis, over the contrary opinion of Dr. Baker, because their opinions are better reasoned, documented and supported by the objective evidence. *See Trumbo v. Reading Anthracite Co.,* 17 BLR 1-85 (1993); *Clark, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.,* 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP,* 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); Decision and Order at 10-11. The administrative law judge permissibly found that Dr. Baker's opinion, diagnosing pneumoconiosis, was entitled to less weight as his diagnosis of pneumoconiosis was based only on his x-ray interpretation and an inaccurate history of coal mine employment, not on the objective findings from his examination. Decision and Order at 10-11; Director's Exhibit 7; *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Dillon v. Peabody Coal Co.,* 11 BLR 1-113 (1988); *Hutchens v. Director, OWCP,* 8 BLR 1-16 (1985). Thus, we affirm the administrative law judge's finding that the preponderance of the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4). *Perry, supra*.

With respect to 20 C.F.R. §718.204(c)(4), the administrative law judge also rationally determined that the evidence of record was insufficient to establish total disability.[4] The administrative law judge properly concluded that the newly submitted evidence was insufficient to establish total disability as no physician of record opined

[4]Since the record does not contain any evidence of cor pulmonale with right sided congestive heart failure, the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(3). *Newell v. Freeman United Coal Mining Co.,* 13 BLR 1-37 (1989).

that claimant was suffering from a totally disabling respiratory or pulmonary impairment.[5] Director's Exhibits 7, 19; Employer's Exhibits 2, 3; Decision and Order at 12; *Tackett v. Cargo Mining Co.,* 12 BLR 1-11 (1988); *Fields, supra*; *Budash v. Bethlehem Mines Corp.,* 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon.* 9 BLR 1-104 (1986)(*en banc*); *Gee v. W. G. Moore and Sons,* 9 BLR 1-4 (1986)(*en banc*); *Perry, supra*. Contrary to claimant's contention, opinions finding no significant or compensable impairment need not be discussed by the administrative law judge in terms of claimant's former job duties. *Wetzel, supra*. Moreover, we reject claimant's argument that the administrative law judge failed to consider that he is totally disabled for comparable and gainful work because of his age, work experience and education since the newly submitted medical opinions do not establish the existence of a totally disabling respiratory impairment under Section 718.204(c).[6] *See* 20 C.F.R. §718.204(c)*; Carson v. Westmoreland Coal Co.,* 19 BLR 1-18 (1994); *see also Ramey v. Kentland v. Elkhorn Coal Corp.*, 775 F.2d 485, 7 BLR 2-124 (6th Cir. 1985).

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *Clark*, *supra*; *Anderson, supra*; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, as the administrative law judge in this case adequately examined and discussed all of the relevant newly submitted evidence as it relates to the existence of pneumoconiosis and total disability and permissibly concluded that this evidence fails to carry claimant's burden of establishing a material change in conditions pursuant to 20 C.F.R. §725.309, we affirm the

[5]Dr. Baker opined that claimant does not have a pulmonary impairment and is able to return to his former coal mine employment. Director's Exhibit 7. Dr. Broudy opined that claimant has the respiratory capacity to return to coal mine employment or to do similarly arduous manual labor. Director's Exhibit 19. Dr. Branscomb stated that claimant does not have an impairment in any way related to his coal mine employment. Employer's Exhibit 2. Dr. Fino opined that claimant has the respiratory capacity to return to his coal mine employment. Employer's Exhibit 3.

[6]Claimant's reliance on *Bentley v. Director, OWCP,* 7 BLR 1-612 (1982), is misplaced. In *Bentley*, the Board held that age, work experience and education are only relevant to claimant's ability to perform comparable and gainful work, an issue which did not need to be reached in that case in light of the administrative law judge's finding at Section 410.426(a) that claimant did not establish that he had any impairment which disabled him from his usual coal mine employment. *See also* 20 C.F.R. §718.204(b)(1), (b)(2).

administrative law judge's denial of benefits as it is supported by substantial evidence and is in accordance with law.

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