

BRB No. 06-0561 BLA

CARLOS COOTS)
)
 Claimant-Petitioner)
)
 v.)
)
 BLEDSOE COAL CORPORATION) DATE ISSUED: 01/30/2007
)
 and)
)
 JAMES RIVER COAL COMPANY)
)
 Employer/Carrier-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision on Remand - Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Michelle S. Gerdano (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision on Remand - Denying Benefits (03-BLA-5601) of

Administrative Law Judge Joseph E. Kane (the administrative law judge) rendered 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). This case is on appeal to the Board for the second time. When this case was previously before the Board, the Board vacated the administrative law judge's Decision and Order denying benefits and remanded the case. The Board held that the administrative law judge had erred in not applying the evidentiary limitations at 20 C.F.R. §725.414. In particular, pursuant to 20 C.F.R. §718.202(a)(4), the Board held that the administrative law judge must apply the evidentiary limitations to determine whether Dr. Repsher's report constituted excess medical opinion evidence. Regarding Section 718.202(a)(1), the Board affirmed the administrative law judge's finding that the x-ray evidence failed to establish the existence of pneumoconiosis. The Board held that the administrative law judge had properly considered both the qualitative and quantitative nature of the x-ray evidence. *Coots v. Bledsoe Coal Corp.*, BRB No. 04-0838 BLA (Aug. 12, 2005)(unpub.).

On remand, the administrative law judge found that the medical opinions submitted by employer which were before him were those of Drs. Broudy and Rosenberg because employer withdrew the report and deposition of Dr. Repsher. Decision and Order at 3. Considering the evidence before him, the administrative law judge found that while it established a totally disabling respiratory impairment, 20 C.F.R. §718.204(b)(2)(i), (iv), it failed to establish the existence of pneumoconiosis arising out of coal mine employment or total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1)-(4), 718.203, 718.204(b). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the x-ray and medical opinion evidence did not establish the existence of pneumoconiosis and erred in finding that claimant was not totally disabled. Claimant also contends that the case must be remanded because he was not provided with a complete credible pulmonary evaluation sufficient to substantiate his claim, since the administrative law judge rejected the opinion of Dr. Hussain, the physician who provided him, on behalf of the Department of Labor (DOL), with a pulmonary evaluation. Employer responds, contending that the administrative law judge's Decision and Order should be affirmed. The Director, Office of Workers' Compensation Programs (the Director), responds, asserting that he will not file a substantive pleading addressing the merits of claimant's entitlement. In response to claimant's assertion that he was not provided with a complete, credible pulmonary evaluation, however, the Director responds that this argument should be rejected because, regardless of Dr. Hussain's opinion, the administrative law judge properly found that a preponderance of the evidence was negative for the existence of pneumoconiosis and the administrative law judge properly found the opinions of Drs. Broudy and Rosenberg, that claimant did not have pneumoconiosis, to be the most persuasive of record.

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 into the Act by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

At the outset, we note that we will not address claimant’s argument that the administrative law judge erred in failing to find the existence of pneumoconiosis established based on x-ray evidence since the Board previously affirmed that finding. *Coots*, BRB No. 04-0838 BLA; see *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990), *rev’d on other grounds*, *Peabody Coal Co. v. Brinkley*, 972 F.2d 880, 16 BLR 2-129 (7th Cir. 1992); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

We turn, therefore, to claimant’s contention that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of pneumoconiosis at Section 718.202(a)(4). Claimant contends that the administrative law judge should have found the existence of pneumoconiosis established based on the documented opinion of Dr. Baker, who was Board-certified in internal medicine and claimant’s treating physician, and who diagnosed coal workers’ pneumoconiosis, 1/0, and attributed claimant’s respiratory disease, at least in part, to coal dust exposure. Claimant also contends that the documented opinion of Dr. Hussain, who was Board-certified in internal medicine with a subspecialty in pulmonary disease, and who examined claimant on behalf of DOL establishes the existence of pneumoconiosis. Claimant contends that Dr. Hussain diagnosed coal workers’ pneumoconiosis, 2/2, and a severe pulmonary impairment due to coal dust exposure. Claimant further contends that the administrative law judge erred in failing to accord greater weight to Dr. Baker’s opinion pursuant to 20 C.F.R. §718.104(d) because he was claimant’s treating physician.

In considering the opinions of Drs. Baker, Hussain, Broudy, and Rosenberg, the administrative law judge gave little weight to the opinion of Dr. Baker because his diagnosis of clinical pneumoconiosis was based on x-ray and exposure history and he did not relate claimant’s chronic bronchitis or chronic airway disease to coal dust exposure. The administrative law judge also found that the doctor’s general statement that claimant’s pulmonary impairment was due, at least in part, to coal dust exposure was based on his x-ray finding. The administrative law judge accorded little weight to the opinion of Dr. Hussain because the doctor failed to conduct an employment history on claimant.¹ In contrast, the administrative law judge accorded great weight to the opinions of Drs. Broudy and Rosenberg, pulmonary specialists, who found that claimant did not have pneumoconiosis or any other coal mine dust related disease, as he found their opinions better documented and reasoned. The administrative law judge’s evaluation of the medical opinion evidence was

¹ In the administrative law judge’s prior decision, he found that the parties had stipulated to thirty-one years of coal mine employment. *Coots v. Bledsoe Coal Corp.*, BRB No. 04-0838 BLA (Aug. 12, 2005)(unpub.).

proper. 20 C.F.R. §§718.104(d)(5), 718.201; *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 11 BLR 1-111, 1-113 (1989); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985). Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence fails to establish the existence of pneumoconiosis.²

Finally, claimant contends that because the administrative law judge did not credit the opinion of Dr. Hussain, who evaluated claimant for the DOL, "the Director has failed to provide claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 8-9. Both employer and the Director responds that, even though the administrative law judge accorded little weight to Dr. Hussain's opinion because the doctor did not document the length of claimant's coal mine employment, since the administrative law judge chose to credit the opinions of Drs. Broudy and Rosenberg, which he found to be better reasoned and documented overall, as the administrative law judge found, remand of the case for Dr. Hussain to address claimant's employment history would be futile. We agree. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). As the Director contends, Dr. Hussain addressed the elements of entitlement and the administrative law judge did not reject the doctor's report, but accorded it less weight because the contrary opinions of Drs. Broudy and Rosenberg were better reasoned and consistent with their underlying documentation. This was proper. *See Cline v. Director, OWCP*, 972 F.2d 234, 14 BLR 2-102 (8th Cir. 1992); *Clark*, 12 BLR 1-149; *Fields*, 10 BLR 1-19. Accordingly, claimant's argument in this regard is rejected.

² Claimant also contends that the administrative law judge erred in failing to find claimant totally disabled. In fact, the administrative law judge found claimant totally disabled on the basis of pulmonary function study and medical opinion evidence. 20 C.F.R. §718.204(b)(2)(i), (iv).

Accordingly, the administrative law judge's Decision on Remand - Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge