

BRB No. 88-3755 BLA

ROBERT B. MARINI)
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Jeffrey A. Rabin, Chicago, Illinois, for claimant.

Robert E. Kirschman, Jr. (Robert P. Davis, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Jeffrey J. Bernstein, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

Before: SMITH, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and BONFANTI, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order on Remand Denying Benefits (83-BLA-292) of Administrative Law Judge Richard D. Mills 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 *Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

U.S.C. §901 et seq. (the Act). This case is before the Board for the second time. In the first appeal, the Board reversed the administrative law judge's findings with regard to the viability of claimant's original 1973 claim and the applicability of the regulations at 20 C.F.R. Part 727, and remanded the case for reconsideration of claimant's subsequent 1981 claim pursuant to the regulations at 20 C.F.R. Part 718. See Marini v. Director, OWCP, BRB Nos. 85-2793 BLA and 85-2793 BLA/A (February 29, 1988)(unpublished). On remand, the administrative law judge credited claimant with nine and one-half years of qualifying coal mine employment, and found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(c). However, the administrative law judge found the evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, benefits were denied. Claimant now appeals, contending that the medical opinion of Dr. Sachdev considered in conjunction with the lay testimony establishes total disability under 20 C.F.R. §718.204(c)(4). The Director, Office of Workers' Compensation Programs

(the Director), responds, urging affirmance.¹

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 to benefits under 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

¹ The administrative law judge's findings under 20 C.F.R. §§718.202(a)(1), 718.203(c), 718.204(c)(1) - (c)(3), and with regard to length of coal mine employment are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

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 Decision and Order of the administrative law judge is supported by substantial evidence, and that there is no reversible error contained therein. Claimant contends that the medical opinion of Dr. Sachdev, who diagnosed chronic bronchitis, probable coal workers' pneumoconiosis, and listed physical limitations, is reasoned and documented. Further, claimant argues that the administrative law judge erred in according less weight to Dr. Sachdev's opinion solely because the limitations listed under the "Medical Assessment" section of the report were identical in part to claimant's recitation of symptoms under the "Present Illness" section. Claimant notes that the administrative law judge found claimant's testimony as to his breathing difficulties to be credible, and maintains that Dr. Sachdev merely concurred with his patient. Claimant further argues that the pulmonary function study conducted by Dr. Sachdev produced qualifying² results under 20 C.F.R. Part 727, and that although the results are non-qualifying under 20 C.F.R. Part 718, they nevertheless

² A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively, or in the tables at 20 C.F.R. §727.203(a)(2) and (a)(3), respectively. A "non-qualifying" study yields values that exceed those values.

corroborate Dr. Sachdev's assessment and claimant's testimony. Contrary to claimant's contentions, however, the administrative law judge acted within his discretion in finding that the limitations listed by Dr. Sachdev merely constituted a narrative of claimant's symptoms which are insufficient to establish total disability, see McMath v. Director, OWCP, 12 BLR 1-6, 1-10 (1988); Bushilla v. North American Coal Corp., 6 BLR 1-365 (1983); Parsons v. Director, OWCP, 6 BLR 1-272 (1983), rather than a medical assessment of physical limitations which must be compared to the exertional requirements of claimant's usual coal mine employment, see Gee v. W.G. Moore and Sons, 9 BLR 1-4 (1986); Stanley v. Eastern Associated Coal Corp., 6 BLR 1-1157 (1984). The administrative law judge permissibly discredited Dr. Sachdev's opinion as he failed to provide any rationale or discuss the clinical basis for an assessment of the limitations listed. Decision and Order at 3; Director's Exhibits 12, 14, 16. See generally Duke v. Director, OWCP, 6 BLR 1-673 (1983); see also Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). The administrative law judge properly weighed all probative evidence, like and unlike, and found that claimant failed to meet his burden of establishing total disability under Section 718.204(c). See Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); Rafferty v. Jones & Laughlin Steel Corp., 9 BLR 1-231 (1987); Shedlock v. Bethlehem Mines Corp., 9 BLR 1-195 (1986). The administrative law judge's findings and inferences are rational and based on substantial evidence, and we may not substitute our judgment. See Anderson, supra. Inasmuch as claimant has failed

to establish a requisite element of entitlement under 20 C.F.R. Part 718, i.e. total disability, we affirm the administrative law judge's finding that claimant is not entitled to benefits. See Trent, supra.

Accordingly, the Decision and Order on Remand Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

RENO E. BONFANTI
Administrative Law Judge