

BRB Nos. 89-0411 BLA
and 89-0411 BLA/A

RAYMOND CHAMBERS)
)
 Claimant-Petitioner)
 Cross-Respondent)
)
 v.)
)
 BETHENERGY MINES,)
 INCORPORATED)
)
 Employer-Respondent)
 Cross-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Theresa C. Homady (Pawlowski, Creany & Tulowitzki), Ebensburg, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose), Johnstown, Pennsylvania, for employer.

Before: SMITH and DOLDER, Administrative Appeals Judges, and FEIRTAG, Administrative Law Judge.*
PER CURIAM:

Claimant appeals and employer cross-appeals the Decision and Order (85-BLA-6082) of Administrative Law Judge C. Richard Avery denying benefits on a claim filed pursuant to the provisions of *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).

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 determined that claimant established a material change in conditions pursuant to 20 C.F.R. §725.309, and considered the merits of this duplicate claim under the regulations at 20 C.F.R. Part 718. The administrative law judge credited claimant with at least twenty-three years of qualifying coal mine employment as stipulated to by the parties and supported by the record, and found that claimant established the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1). The administrative law judge further found, however, that claimant failed to establish total disability due to pneumoconiosis under 20 C.F.R. §718.204. Accordingly, benefits were denied.

Claimant appeals, contending that the weight of the evidence establishes total disability due to pneumoconiosis under Section 718.204(b) and (c)(4). Employer responds, urging affirmance. In a cross-appeal, employer asserts that the administrative law judge failed to address the hearing testimony of Dr. Fino, and thus failed to consider all relevant evidence under Section 718.204(b) and (c)(4).

Claimant responds, agreeing that the testimony of Dr. Fino constitutes relevant evidence which should be considered on remand, but asserts that the opinion merits little weight. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.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.

¹ The administrative law judge's findings under Sections 718.202(a)(1) and 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).

Director, OWCP, 11 BLR 1-26 (1987).

Claimant contends that the administrative law judge, in finding that the weight of the evidence failed to establish causation under Section 718.204(b), erred in rejecting the opinions of Drs. Katter, Srivastava, Mastrine, Klemens and Malhotra, who determined that claimant was totally disabled due to pneumoconiosis. Contrary to claimant's contentions, however, the administrative law judge did not reject these opinions, but permissibly accorded them less weight, and accorded greater weight to the opinions which he deemed were better supported by the objective evidence of record, i.e., the opinions of Drs. Pickerill, Solic and Strother, who determined that claimant had a mild to moderate pulmonary impairment which was due to smoking and was unrelated to coal mine employment exposure.² Decision and Order at 11; see generally Wetzel v. Director, OWCP, 8 BLR 1-139 (1985); Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). Claimant further asserts that the administrative law judge erred in relying on the opinions of Drs. Pickerill, Solic and

² Claimant argues that the administrative law judge failed to fully evaluate the underlying documentation before according greater weight to the opinions of Drs. Pickerill, Solic and Strother, and maintains that the objective tests upon which these physicians relied may have been affected by claimant's breathing medications. Claimant's arguments are without merit. The administrative law judge may not independently analyze the objective tests, as the interpretation of medical data is for the medical experts. See Marcum v. Director, OWCP, 11 BLR 1-23 (1987). Additionally, employer notes that Drs. Pickerill and Solic specifically stated that claimant did not use his pulmonary medications on the day of their examinations. See Employer's Exhibits 7, 12.

Strother, as they were based in part on negative x-rays, and the physicians incorrectly determined that claimant did not have pneumoconiosis. The administrative law judge is not bound to accord these opinions less weight simply because the physicians relied in part on a negative x-ray. Moreover, a review of the record indicates that although Dr. Strother found no evidence of pneumoconiosis, Dr. Pickerill diagnosed minimal pneumoconiosis by x-ray, i.e., 1/0 pp, and Dr. Solic found no significant evidence of pneumoconiosis by x-ray. Decision and Order at 9; see Employer's Exhibits 1, 2, 7, 12. Contrary to claimant's arguments, the administrative law judge acted within his discretion in according determinative weight to the opinions of Drs. Pickerill and Solic, as they possessed superior qualifications as pulmonary specialists, see Cunningham v. Pittsburg and Midway Coal Co., 7 BLR 1-93 (1984); and they performed the most complete review of the medical evidence of record, see Hall v. Director, OWCP, 8 BLR 1-193 (1985). Decision and Order at 11. The administrative law judge's findings under Section 718.204(b) are supported by substantial evidence and we hereby affirm them. Inasmuch as claimant has failed to establish a requisite element of entitlement, i.e., that his disability is due to pneumoconiosis, claimant is precluded from entitlement to benefits under Part 718. See Trent, supra.³

³ The administrative law judge's failure to address Dr. Fino's testimony was harmless error, inasmuch as Dr. Fino's opinion supports employer's position. See generally Larioni v. Director, OWCP, 6 BLR 1-1276 (1984).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

ERIC FEIRTAG
Administrative Law Judge