

BRB No. 90-0358 BLA

LOUIS E. PUGALEE, JR.))
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 Claimant-Respondent))
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 v.))
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MABEN ENERGY CORPORATION))
))
 Employer-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 Robert S. Amery, Administrative Law Judge, United States Department of Labor.

W. F. Richmond, Jr., Beckley, West Virginia, for employer.

Before: STAGE, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Decision and Order (89-BLA-581) of Administrative Law Judge Robert S. Amery awarding 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 reviewed this *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).

claim pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with at least eighteen and one-half years of qualifying coal mine employment. The administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment under 20 C.F.R. §§718.202(a)(1) and 718.203(b), and total disability due to pneumoconiosis under 20 C.F.R. §718.204. Accordingly, benefits were awarded. Employer appeals, challenging the administrative law judge's findings under Section 718.204. Claimant and the Director, Office of Workers' Compensation Programs, have 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

¹ The administrative law judge's findings under Sections 718.202(a)(1) and 718.203(b), 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).

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).

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 contains no reversible error. The administrative law judge reviewed all of the relevant evidence of record, including that which is contrary and probative, and acted within his discretion in finding that the weight of the evidence established total disability due to pneumoconiosis under Section 718.204.² Decision and Order

² Employer maintains that the opinion of Dr. Daniel and the non-qualifying blood gas studies of record, which were interpreted by Drs. Piracha and Daniel as showing normal lung function with exercise, establish that claimant was not totally disabled pursuant to Section 718.204(c). Contrary to employer's arguments, however, the administrative law judge, as the trier-of-fact, need not accept the opinion of any particular medical expert, even where it is uncontradicted by other medical opinions, but must weigh all of the relevant evidence and draw his own conclusions therefrom. Todd Shipyards Corp. v. Donovan, 300 F.2d 741 (5th Cir. 1962); Knizner v. Bethlehem Mines Corp., 8 BLR 1-5, 1-296 (1985). The administrative law judge permissibly relied on the qualifying pulmonary function study results of record, supported by claimant's testimony and the findings of the West Virginia Occupational Pneumoconiosis Board. See Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987). The Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge. See Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989).

at 3-6; see Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); Shedlock v. Bethlehem Mines Corp., 9 BLR 1-195 (1986); see also Mabe v. Bishop Coal Co., 9 BLR 1-67 (1986). Contrary to employer's contentions, the administrative law judge permissibly relied on the findings of the West Virginia Occupational Pneumoconiosis Board, i.e., that claimant's disability is due to pneumoconiosis, and accorded less weight to the opinions of Drs. Piracha and Daniel, who determined that any disability is due to smoking and not to pneumoconiosis, as these physicians based their opinions in part on the assumption that claimant did not have pneumoconiosis.³ See generally Clark v. Karst-Robbins Coal Co., 12 BLR 1-149, 1-155 (1989); Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985); Trujillo v. Kaiser Steel Corp., 8 BLR 1-472 (1986); Rickey v. Director, OWCP, 7 BLR 1-106, 1-108 (1984). Consequently, we affirm the administrative law judge's findings under Section 718.204 as they are supported by substantial evidence.

Accordingly, the administrative law judge's Decision and Order awarding

³ We reject employer's contentions that the administrative law judge erred in failing to explicitly address the provisions of Section 718.204(c)(5) and (d), as the administrative law judge considered the issues of total disability and causation separately, and did not rely solely upon claimant's testimony in finding that claimant's disability was due to pneumoconiosis. Rather, the administrative law judge permissibly credited claimant's testimony in conjunction with the West Virginia Occupational Pneumoconiosis Board's determination that claimant's respiratory impairment was due to pneumoconiosis, over the opinions of Drs. Daniel and Piracha that it was due to smoking. Decision and Order at 5, 6; see generally Robinson v. Pickands, Mather & Co., 914 F.2d 1144, 14 BLR 2-68 (4th Cir. 1990); Salyers v. Director, OWCP, 12 BLR 1-193 (1989).

benefits is affirmed.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge