BRB No. 95-1664 BLA

JACKIE H. MURPHY )
)
Claimant-Petitioner )
)
v. )
)
CHISHOLM MINE-PICKANDS MATHER )
)
and )
)
U.S.S. & C. INCORPORATION ) DATE ISSUED:
)
Employer/Carrier- )
Respondents )
) )
DIRECTOR, OFFICE OF WORKERS' )
COMPENSATION PROGRAMS, UNITED )
STATES DEPARTMENT OF LABOR )
)
Party-In-Interest ) DECISION and ORDER

Appeal of the Decision and Order of J. Michael O'Neill, Administrative Law Judge, United States Department of Labor.

Herbert Deskins, Jr. (Deskins & Pafunda), Pikeville, Kentucky, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D.C., for employer.

Before: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order (94-BLA-0103) of Administrative Law Judge J. Michael O'Neill 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 credited claimant with thirty years of qualifying coal mine employment and found the

[1]Claimant is Jackie H. Murphy, the miner, who filed a claim for benefits on February 27, 1992. Director's Exhibit 1.

evidence insufficient to establish the existence of pneumoconiosis and total respiratory disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in failing to find the evidence sufficient to establish the existence of pneumoconiosis and total respiratory disability. Employer responds, urging affirmance, and the Director, Office of Workers' Compensation Programs (the Director), has chosen not to participate in this appeal.[2]

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).

The Board is not authorized to undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of authority between the administrative law judge as the trier-of-fact and the Board as a reviewing tribunal. 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). The Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order with specificity and demonstrate that substantial evidence does not support the result reached or that the Decision and Order is contrary to law. 20 C.F.R. §802.211(b); *Cox v. Director, OWCP*, 7 BLR 1-610 (1984), *aff'd* 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Unless the party identifies errors and briefs its allegations in terms of the relevant law and evidence, the Board has no basis upon which to review the decision. *Sarf*, *supra*; *Fish*, *supra*.

In this claim, other than generally asserting that the medical evidence is sufficient to establish entitlement, *see* Claimant's Brief at 1-2, claimant has failed to identify any errors made by the administrative law judge in the evaluation of the

[2]We affirm the administrative law judge's finding as to the length of claimant's coal mine employment as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

evidence and applicable law pursuant to 20 C.F.R. Part 718. Nonetheless, in the interest of judicial efficiency, we will address the administrative law judge's weighing of the evidence pursuant to Section 718.202(a).

Pursuant to Section 718.202(a)(1), the administrative law judge found only three of thirty-two interpretations of eleven x-rays to be positive for the existence of pneumoconiosis, Director's Exhibits 11, 20, 23, 24; Employer's Exhibits 1, 3, 4, 6-8, 13-18; Claimant's Exhibits 1-3, and they were rendered by physicians who are neither B-readers nor Board-certified radiologists. Claimant's Exhibits 1-3. Seventeen of the negative interpretations were made by physicians who are both B-readers and Board-certified radiologists. Director's Exhibits 10, 20, 23, 24; Employer's Exhibits 1, 3, 4, 13-17; Claimant's Exhibit 1. The administrative law judge stated that he assigned the greatest weight to the physicians with the highest qualifications and found that the weight of the x-ray evidence is negative for the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Decision and Order at 7.

Inasmuch as the administrative law judge may assign the greatest weight to the physicians with the highest credentials, *see Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990), *rev'd* 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985), and may rely on the numerical superiority of the x-ray interpretations, *see Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990), we affirm the administrative law judge's findings pursuant to Section 718.202(a)(1).

There is no autopsy or biopsy evidence in the record in this case; thus, the existence of pneumoconiosis cannot be established pursuant to 20 C.F.R. §718.202(a)(2). Also, the existence of pneumoconiosis cannot be established pursuant to 20 C.F.R. §718.202(a)(3) inasmuch as there is no evidence of complicated pneumoconiosis in this living miner's claim filed after January 1, 1982, and claimant has not established fifteen or more years of coal mine employment. *See* 20 C.F.R. §§718.304, 718.305, 718.306(a).

Pursuant to Section 718.202(a)(4), the administrative law judge considered the opinions of nine physicians.[3] Director's Exhibits 20, 24, 32; Employer's Exhibits

[3]The administrative law judge failed to discuss the opinions of Drs. Carrillo and Powell pursuant to Section 718.202(a)(4). Director's Exhibit 8; Employer's Exhibit 6. However, this error is harmless because neither diagnosed the existence of pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

9, 12; Claimant's Exhibits 1-3. The administrative law judge found that the opinions of Drs. Sutherland, Clarke, and Musgrave diagnosing pneumoconiosis were entitled to less weight than the opinions of Drs. Dahhan and Broudy, both of whom are examining physicians and board-certified in pulmonary disease. Decision and Order at 7; Director's Exhibits 20, 24; Claimant's Exhibits 1-3. The administrative law judge further found that the opinions of Drs. Dahhan and Broudy were supported by those of Drs. Vuskovich, Mettu, Fino, and Lane, and concluded that the evidence was insufficient to establish the existence of statutory pneumoconiosis. Decision and Order at 7; Director's Exhibits 20, 24, 32; Employer's Exhibits 9, 12.

Inasmuch as the administrative law judge may assign the greatest weight to the physicians with the highest credentials, *see Scott*, *supra*; *Martinez*, *supra*; *Wetzel*, *supra*, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(4). Further, as claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the administrative law judge's denial of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

REGINA C. McGRANERY
Administrative Appeals Judge