

BRB No. 02-0530 BLA

WILLIAM GARY RUNYON)

Claimant)

v.)

MATE CREEK TRUCKING, INC.)

and)

WEST VIRGINIA COAL WORKERS')
PNEUMOCONIOSIS FUND)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

) DATE ISSUED:

) DECISION and ORDER

Appeal of the Decision and Order - Award of Benefits of Daniel J. Roketenetz,
Administrative Law Judge, United States Department of Labor.

Robert Weinberger (Employment Programs Litigation Unit, West Virginia
Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for
employer and carrier.

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

PER CURIAM:

Carrier appeals the Decision and Order (2001-BLA-0913) of Administrative Law
Judge Daniel J. Roketenetz 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).¹ The administrative law judge credited claimant with 16.65 years of qualifying coal mine employment, and adjudicated this claim, filed on November 8, 2000, pursuant to the provisions at 20 C.F.R. Part 718.² The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §718.202(a)(4), 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(ii), (iv), (c). Accordingly, benefits were awarded.

On appeal, carrier challenges the administrative law judge's finding of pneumoconiosis at Section 718.202(a)(4) and his finding of total respiratory disability and disability causation at Section 718.204. Claimant has not participated in this appeal. The Director, Office of Workers' Compensation Programs (the Director), has declined to file a response.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

²This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's last coal mine employment occurred in the State of West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

Carrier initially contends that the administrative law judge erred in relying on the opinions of Drs. Ranavaya and Zaldivar to support his finding that claimant established the existence of pneumoconiosis at Section 718.202(a)(4). Specifically, carrier asserts that these opinions are unreasoned and insufficient to meet claimant's burden because the physicians based their diagnoses of pneumoconiosis solely upon claimant's history of coal dust exposure and their own positive x-ray interpretations, which the administrative law judge found were outweighed by the negative interpretations by better-qualified readers.³ Carrier's Brief at 4. Carrier's arguments lack merit. The administrative law judge accurately determined that Dr. Ranavaya reported a diagnosis of pneumoconiosis based upon a 27 year history of exposure to dust in coal mining and radiological evidence of it, and that the physician also performed a physical examination of claimant, obtained social and work histories, took an EKG, pulmonary function studies and arterial blood gas analyses, and concluded that claimant had a moderately severe respiratory impairment related to pneumoconiosis which prevented him from performing his usual coal mine employment. Decision and Order at 11-12; Director's Exhibit 11. The administrative law judge further determined that Dr. Zaldivar diagnosed pneumoconiosis and opined that claimant's pulmonary impairment resulted from a combination of smoking, cardiac surgery and pneumoconiosis based upon claimant's social and work histories, a physical examination, chest x-ray, and pulmonary function study results. Decision and Order at 11-12; Director's Exhibit 22. We therefore reject carrier's arguments, and affirm, as supported by substantial evidence, the administrative law judge's finding that claimant established the existence of pneumoconiosis at Section 718.202(a)(4) based upon the opinions of Drs. Ranavaya and Zaldivar, which the administrative law judge found to be well reasoned and supported by the objective laboratory data of record. Decision and Order at 12; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

³The administrative law judge found, and the record reflects, that the x-ray film dated December 5, 2000, was interpreted as positive for pneumoconiosis by Dr. Ranavaya, a B reader, but was interpreted as negative for pneumoconiosis by Drs. Sargent, Barrett, Wiot and Spitz, all dually qualified B readers and Board-certified radiologists. Decision and Order at 9; Director's Exhibits 11-13, 20, 21. The x-ray dated April 18, 2001, was interpreted as positive for pneumoconiosis by Dr. Zaldivar, a B reader, and the record contains no conflicting interpretations of this film. Decision and Order at 9; Director's Exhibit 22.

Carrier next contends that the administrative law judge erred in finding total respiratory disability established pursuant to Section 718.204(b)(2)(ii) and (iv) based upon claimant's qualifying blood gas study results at rest and the report of Dr. Ranavaya. Carrier asserts that blood gas study results on exercise are a more reliable indication of the extent of a miner's respiratory disability, and that Dr. Ranavaya's opinion cannot be considered well reasoned because the physician declined to conduct exercise studies, finding that they were unnecessary in light of claimant's results at rest. Employer's Brief at 4-5. Carrier's arguments are without merit. The record reflects that in conjunction with Dr. Ranavaya's pulmonary evaluation of claimant on December 5, 2000, claimant signed a form indicating that he did not wish to undergo an exercise blood gas study because he had previously had difficulty performing a stress test and had suffered two heart attacks.⁴ Director's Exhibit 11. Dr. Ranavaya thus did not perform an exercise study, noting that claimant's resting values met the federal criteria for total disability. *Id.* In finding that the weight of the evidence, like and unlike, established total respiratory disability at Section 718.204(b)(2), the administrative law judge acted within his discretion as trier-of-fact in according determinative weight to the opinion of Dr. Ranavaya, which he found to be well reasoned and supported by the qualifying blood gas results of record as well as by qualifying pulmonary function studies considered valid by both Dr. Ranavaya and a consulting expert, Dr. Burki. Decision and Order at 14-15; Director's Exhibit 11; *see Fields, supra*. As the administrative law judge's findings pursuant to Section 718.204(b)(2) are supported by substantial evidence, they are affirmed.

Lastly, carrier contends that the administrative law judge erred in crediting the opinion of Dr. Ranavaya to support his finding that claimant established disability causation at Section 718.204(c). Carrier maintains that Dr. Ranavaya's failure to discuss the impact of smoking upon claimant's disability rendered less reliable the physician's opinion that claimant's total respiratory disability was caused by pneumoconiosis. Carrier's Brief at 5. The administrative law judge, however, accurately determined that Dr. Ranavaya recorded claimant's lengthy smoking history, and that Dr. Zaldivar additionally attributed claimant's respiratory impairment to both smoking and pneumoconiosis. Decision and Order at 16; Director's Exhibits 11, 22. We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that claimant established disability causation pursuant to Section 718.204(c)(1), *see Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990), and we affirm the administrative law judge's award of benefits.

⁴The record additionally reflects that Dr. Zaldivar did not perform resting or exercise blood gas testing of claimant due to the "risk of damage in the radial artery and stopping the blood flow to the hands." Director's Exhibit 22; Decision and Order at 15.

Accordingly, the administrative law judge's Decision and Order - Award of Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge