BRB No. 08-0579 BLA

E. C.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED: 03/31/2009
LOCUST GROVE, INCORPORATED	)	
	)	
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-Awarding Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order-Awarding Benefits (06-BLA-5356) of Administrative Law Judge Joseph E. Kane rendered 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

[1] Claimant filed his claim for benefits on February 25, 2005. Director's Exhibit 2. The district director awarded benefits, and employer timely requested a hearing. Director's Exhibits 44, 48, 52.

claimant with thirty-four years of coal mine employment[2] pursuant to the parties' stipulation. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence established the existence of both clinical pneumoconiosis arising out of coal mine employment, and legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) related to coal mine dust exposure.[3] *See* 20 C.F.R. §§718.202(a)(1),(4), 718.203(b). The administrative law judge further found that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Finally, the administrative law judge determined that both clinical pneumoconiosis and legal pneumoconiosis are substantially contributing causes of claimant's total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the x-ray evidence established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Employer argues further that the administrative law judge erred in his analysis of the medical opinion evidence when he found that the existence of legal pneumoconiosis and total disability due to pneumoconiosis were established pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(c).[4] Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response in this appeal.

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[2] The record indicates that claimant's last coal mine employment was in Kentucky. Director's Exhibit 6. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[3] Clinical pneumoconiosis is a disease "characterized by [the] permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2)(b).

[4] Because employer does not challenge the administrative law judge's findings that claimant's clinical pneumoconiosis arose out of coal mine employment and that claimant is totally disabled by a respiratory impairment pursuant to 20 C.F.R. §§718.203(b), 718.204(b)(2), those findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered ten readings of four x-rays and considered the readers' radiological qualifications. Decision and Order at 4, 11. The administrative law judge considered that the May 10, 2005 x-ray was read as positive for pneumoconiosis by Dr. Baker, a B reader, and by Dr. Alexander, a Board-certified radiologist and B reader, while the same x-ray was read as negative for pneumoconiosis by Dr. Wheeler, a Board-certified radiologist and B reader.[5] Director's Exhibits 10, 14, 15. The administrative law judge further noted that Dr. Broudy, a B reader, interpreted the June 7, 2005 x-ray as positive for pneumoconiosis. Director's Exhibit 12. The administrative law judge further noted that the x-ray dated June 17, 2005 was read as positive for pneumoconiosis by Drs. Ramakrishnan and Deponte, both Board-certified radiologists and B readers, and that Dr. Wheeler, who possesses the same qualifications, read the x-ray as negative for pneumoconiosis. Claimant's Exhibits 3, 4; Employer's Exhibit 4. Finally, the administrative law judge considered that the x-ray dated July 25, 2005 was read as positive for pneumoconiosis by Dr. Alexander, a Board-certified radiologist and B reader, and as "0/1", or negative, for pneumoconiosis by Dr. Dahhan, a B reader. Director's Exhibit 13; Claimant's Exhibit 1. The administrative law judge found that, in view of the "numerous positive readings by dually-qualified readers and only three negative readings," the x-ray evidence was "overwhelmingly positive for pneumoconiosis." Decision and Order at 11.

Employer alleges no specific error in the administrative law judge's evaluation of the physicians' x-ray interpretations or radiological qualifications. Instead, without citing specific evidence, employer states that claimant's x-rays "can be consistent" with lung

[5] Dr. Barrett, a Board-certified radiologist and B reader, reviewed the May 10, 2005 x-ray for quality purposes only. Director's Exhibit 11.

cancer,[6] and that the positive readings in this case do not adequately address this possibility. Employer's Brief at 9. Review of the x-ray readings, however, reveals that none of the physicians concluded that claimant currently has lung cancer or indicated that abnormalities resulting from past lung cancer were mistaken for pneumoconiosis.[7] Thus, contrary to employer's assertion, the administrative law judge properly considered the conflicting x-ray readings based on the readers' radiological qualifications. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993). Substantial evidence supports the administrative law judge's finding that the x-ray evidence established the existence of clinical pneumoconiosis. We therefore reject employer's contention and affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Although the administrative law judge need not have gone on to discuss whether the medical opinions also established pneumoconiosis, *see Dixon v. North Camp Coal Co.*, 8 BLR 1-344, 1-345 (1985), he considered them and found that the opinions of Drs. Baker, Koura, and Broudy, diagnosing clinical coal workers' pneumoconiosis, were well-reasoned and documented, and established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). As employer does not challenge this finding, it is affirmed.[8] *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). The administrative law judge's finding of clinical pneumoconiosis is sufficient to support claimant's burden to establish the existence of pneumoconiosis. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 306, 23 BLR 2-261, 2-285 (6th Cir. 2005). Thus, we need not address employer's challenge to the administrative law judge's additional finding that the medical opinions established that claimant's COPD constitutes legal pneumoconiosis. We therefore affirm the administrative law judge's finding that the existence of clinical pneumoconiosis was established pursuant to 20 C.F.R. §718.202(a).

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[6] The record reflects that in 2004 claimant was treated for lung cancer. Employer's Exhibits 2, 7.

[7] To the contrary, in addition to claimant's physicians, two of employer's physicians, both B readers, indicated that there were abnormalities on claimant's x-rays consistent with pneumoconiosis. Dr. Broudy classified them as "1/0," while Dr. Dahhan rated them as "0/1" in profusion. Director's Exhibits 12, 13.

[8] Additionally, employer does not challenge the administrative law judge's finding that employer's negative CT scan reading, submitted as other medical evidence pursuant to 20 C.F.R. §718.107, was outweighed by the "overwhelmingly positive" x-rays. Decision and Order at 14 n.10. The finding is therefore affirmed. *Skrack*, 6 BLR at 1-711.

Employer challenges the administrative law judge's determination, pursuant to 20 C.F.R. §718.204(c), that the medical evidence establishes that claimant is totally disabled due to clinical pneumoconiosis. As the administrative law judge correctly summarized, a miner is considered totally disabled due to pneumoconiosis if pneumoconiosis:

> is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:
>
> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
>
> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1); *see Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 610-11, 22 BLR 2-288, 2-303 (6th Cir. 2001).

The record reflects that Drs. Baker and Koura indicated that claimant's totally disabling respiratory impairment is due to both clinical coal workers' pneumoconiosis and COPD. Director's Exhibit 10 at 13-15; Claimant's Exhibit 1 at 3-4. Dr. Baker specifically opined that "Coal Workers Pneumoconiosis, 1/2, COPD . . . arterial hypoxemia and bronchitis all have a material adverse effect on the patient's respiratory condition and contribute to his pulmonary impairment." Director's Exhibit 10 at 14. The administrative law judge found these opinions to be well-reasoned and well-documented because the physicians "based their conclusions on examinations of [c]laimant and their objective findings." Decision and Order at 17. He therefore accorded the opinions of Drs. Baker and Koura "significant weight." *Id*.

The administrative law judge discounted the contrary opinions of Drs. Broudy and Dahhan that claimant's total disability is due entirely to smoking-related COPD and the effects of the cancer for which he was treated in 2004. The administrative law judge noted that Dr. Broudy opined that claimant's disability is unrelated to his clinical pneumoconiosis because it is "entirely medically improbable" that simple coal workers' pneumoconiosis would contribute to "a severe impairment of this nature [and] one must look for causes other than simple coal workers' pneumoconiosis to explain the findings." Decision and Order at 17, quoting Employer's Exhibit 8 at 2. Although the administrative law judge declined to find Dr. Broudy's opinion to be hostile to the Act, he found the doctor's reasoning to be "nothing more than a generalization that simple coal workers' pneumoconiosis is rarely disabling." Decision and Order at 17. The administrative law judge found that Dr. Broudy's generalization about simple coal workers' pneumoconiosis led him to categorically conclude that he "must look" for other

causes of claimant's impairment, rather than explain why the specific medical findings in this case indicate that claimant's simple coal workers' pneumoconiosis does not substantially contribute to his total disability. Accordingly, the administrative law judge discredited Dr. Broudy's opinion. Further, the administrative law judge discounted Dr. Dahhan's disability causation opinion because Dr. Dahhan did not diagnose clinical pneumoconiosis. *Id*.

Employer's challenges to the above findings lack merit. Employer argues that the administrative law judge erred in discounting Dr. Broudy's assessment as a "generalization," when Dr. Broudy explained that simple coal workers' pneumoconiosis "does not cause the severe obstructive impairment [present] in this matter." Employer's Brief at 10.

Contrary to employer's argument, the issue before the administrative law judge was not whether clinical coal workers' pneumoconiosis has caused claimant's total disability. The administrative law judge had to determine whether claimant's clinical pneumoconiosis substantially contributes to his total disability in that it either has a "material adverse effect" on claimant's respiratory condition or "materially worsens" an impairment that is caused by a disease unrelated to coal mine employment. 20 C.F.R. §718.204(c)(1)(i),(ii). The administrative law judge had before him the opinions of Drs. Baker and Koura that clinical coal workers' pneumoconiosis contributes to claimant's impairment. Dr. Baker specified that clinical coal workers' pneumoconiosis has a "material adverse effect" on claimant's pulmonary condition. Director's Exhibit 10 at 14. In this context, the administrative law judge permissibly found Dr. Broudy's statement, that it is "medically improbable" that simple coal workers' pneumoconiosis contributes, to be a generalization rather than an analysis of the specifics of claimant's case.[9] *See Gray v. SLC Coal Co*., 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

With respect to the opinions of Drs. Baker and Koura, employer essentially argues that these opinions were not well-reasoned or documented. Employer's Brief at 11. However, a determination of whether a medical opinion is reasoned and documented is committed to the discretion of the administrative law judge. *See Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Upon review of these two opinions, we conclude that substantial evidence supports the administrative law judge's determination that the opinions were well-reasoned judgments, based on objective evidence, that clinical pneumoconiosis is a

[9] Employer has not challenged the administrative law judge's decision to discount Dr. Dahhan's opinion because Dr. Dahhan did not diagnose clinical pneumoconiosis. That determination is therefore affirmed. *Skrack*, 6 BLR at 1-711.

substantially contributing cause of claimant's total disability. Director's Exhibit 10; Claimant's Exhibit 1. We therefore reject employer's allegations of error, and affirm the administrative law judge's finding that clinical pneumoconiosis is a substantially contributing cause of claimant's total disability pursuant to 20 C.F.R. §718.204(c). *See Kirk*, 264 F.3d at 610-11, 22 BLR at 2-303. Consequently, we need not address employer's other arguments challenging the administrative law judge's finding that legal pneumoconiosis is also a substantially contributing cause of claimant's total disability.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge