BRB No. 01-0284 BLA

CHESTER CLARK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LONG TRUCKING COMPANY	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

David C. Stratton (Stratton, Hogg & Maddox, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (00-BLA-113) of Administrative Law Judge Daniel J. Roketenetz 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).[1] In the instant request for modification, the administrative law judge, credited

[1] The 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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

claimant with thirteen and three-tenths years of coal mine employment and considered the newly submitted evidence and the evidence from the prior claims together, found it insufficient to establish either the existence of pneumoconiosis or total disability, and thus

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Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001).

insufficient to establish a change in conditions or a mistake in a determination of fact.[2] Accordingly, benefits were denied.

On appeal, claimant challenges the findings of the administrative law judge at Sections 718.202(a)(4) and 718.204(c)(4)(2000). Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.[3]

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,

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[2] Claimant previously filed a claim on September 11, 1987, which was denied by the district director on February 25, 1988 because claimant did not establish the existence of pneumoconiosis or total disability due to pneumoconiosis. No further action was taken on this claim. Director's Exhibit 39. Claimant filed the present claim on July 16, 1993 which was denied by Administrative Law Judge Pamela Lakes Wood on September 29, 1997 because claimant did not establish the existence of pneumoconiosis or total disability (due to pneumoconiosis or otherwise). Director's Exhibit 62. On appeal, the Benefits Review Board affirmed the denial of benefits on September 30, 1998. Director's Exhibit 70. Claimant requested modification of that denial on March 8, 1999, submitting Dr. Sundaram's report with that request.

[3] We affirm the findings of the administrative law judge on the length of coal mine employment, and at 20 C.F.R. §§718.202(a)(1)-(3)(2000), and 718.204(c)(1)-(3)(2000), as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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 in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In challenging the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4)(2000), claimant asserts that the administrative law judge erred in his characterization of the report of Dr. Sundaram, claimant's treating physician, as only a note, not a reasoned opinion. The administrative law judge specifically found that Dr. Sundaram's report was "lacking in documentation or reasoning sufficient to render it well-reasoned or well-documented, and was, therefore, nothing more than a completed questionnaire with little explanation for his finding that claimant suffers from pneumoconiosis." Decision and Order at 9; Director's Exhibits 71, 74. Further, the administrative law judge stated that the only explanation Dr. Sundaram gave for his diagnosis of pneumoconiosis, the notation of over twenty years of coal mine employment, was error, because it was substantially longer than the finding of thirteen and three-tenths years of coal mine employment made by the administrative law judge. Decision and Order at 9. In addition, the administrative law judge found that Dr. Fino provided an extensive, well-reasoned opinion with documentation in support of his conclusions, which was corroborated by the other opinions of record finding the absence of disease. Decision and Order at 9; Employer's Exhibit 1.

The administrative law judge may rationally rely on a medical opinion he finds better reasoned and documented. *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-49 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985). Additionally, the administrative law judge may also give less weight to a medical opinion which is based on an inaccurate length of coal mine employment. *See Hall v. Director, OWCP*, 8 BLR 1-193 (1985). Accordingly, the administrative law judge's finding that the evidence did not establish the existence of pneumoconiosis based on the medical opinion evidence of record is affirmed.

As claimant has failed to establish the existence of pneumoconiosis, he has failed to establish one of the essential elements of Part 718, which, in turn, precludes an award of

benefits under that Part. *Trent, supra*; *Perry, supra*.[4]

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[4] The administrative law judge also found that claimant failed to establish total disability, however, the administrative law judge mischaracterized Dr. Fino's report as not finding claimant to be totally disabled, when Dr. Fino stated that claimant would be unable to return to his usual coal mine employment. Employer's Exhibit 1. Because we affirm the finding that claimant failed to establish the existence of pneumoconiosis, however, any error in the administrative law judge's total disability finding would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *see also Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).