

BRB No. 05-0525 BLA

RALPH WILLIAMSON)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 11/30/2005
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard J. Stayton, Inez, Kentucky, for claimant.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-6575) of Administrative Law Judge Richard A. Morgan 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). This case involves a subsequent claim filed on January 22, 2002.¹ 20 C.F.R. §725.309. After crediting claimant with at least six

¹ Claimant's initial claim for benefits filed with the Social Security Administration on June 16, 1970 was ultimately denied by the Department of Labor on October 21, 1980. Director's Exhibit 1. Claimant took no further action on that claim. Claimant filed a second application for benefits on May 9, 1983, which was denied by the district director

years, but less than ten years, of coal mine employment, the administrative law judge found that the newly submitted medical evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge therefore found that an applicable condition of entitlement had changed since the denial of the prior claim as required by 20 C.F.R. §725.309(d), and he thus considered the claim on its merits. Weighing all of the evidence, old and new, the administrative law judge found that it established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). In addition, he accepted the concession by the Director, Office of Workers' Compensation Programs (the Director), that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). However, the administrative law judge found that the evidence did not establish either that claimant's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(c), or that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's denial of benefits, arguing that the administrative law judge erred in failing to credit the medical opinions of Drs. Narayan and Whitmore on the issue of the existence of pneumoconiosis pursuant to Section 718.202(a)(4), as well as on the issues of whether claimant's pneumoconiosis arose out of his coal mine employment and whether claimant is totally disabled due to pneumoconiosis. In the alternative, claimant contends that the Department of Labor failed to provide him with a complete and credible pulmonary examination as required by the Act. In response, the Director urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director also urges the Board to reject claimant's contention that the case should be remanded for a complete pulmonary examination.²

on October 24, 1984. Director's Exhibit 2. Claimant's third application, filed on October 23, 1991, was denied on June 14, 1993 by Administrative Law Judge Reno E. Bonfanti because claimant failed to establish either the existence of pneumoconiosis or a totally disabling respiratory impairment. Director's Exhibit 3. Claimant filed his fourth claim on January 27, 1997, which was denied by the district director on June 2, 1997. Director's Exhibit 4. Claimant's fifth claim, filed on December 3, 1999, was denied by the district director on December 27, 2000 because no element of entitlement under Part 718 was established. Director's Exhibit 5. Claimant filed his sixth, and current, application for benefits on January 22, 2002. Director's Exhibit 7.

² The parties do not challenge the administrative law judge's decision to credit claimant with at least six years of coal mine employment, his findings pursuant to 20 C.F.R. §§725.309 and 718.202(a)(1), or his acceptance of the Director's concession of a

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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish 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; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 718.204(c), the administrative law judge found that the medical opinions of record did not establish that claimant's total disability is due to pneumoconiosis. In particular, the administrative law judge accorded little weight to Dr. Hussain's opinion that claimant is severely impaired by smoking-related emphysema, because Dr. Hussain did not diagnose pneumoconiosis. Decision and Order at 12; Director's Exhibit 11. Additionally, the administrative law judge found that Dr. Narayan did not address the issue of disability causation and that Dr. Whitmore's treatment notes also did not address the issue of disability causation. Decision and Order at 12; Claimant's Exhibits 2, 3. The administrative law judge further found that Dr. Whitmore's answer to a Department of Labor questionnaire regarding the cause of claimant's impairment was ambiguous and unexplained, and thus failed to establish that pneumoconiosis was a causative factor in claimant's total respiratory disability. Decision and Order at 12; Claimant's Exhibit 3. Consequently, the administrative law judge found that claimant failed to establish total disability due to pneumoconiosis under Section 718.204(c).

Claimant generally contends that the administrative law judge erred in failing to credit the medical opinions of Drs. Narayan and Whitmore, arguing that these opinions were well reasoned and documented. In addition, claimant contends that these opinions should have been credited as opinions by claimant's treating physicians. These contentions lack merit.

Contrary to claimant's contentions, the administrative law judge reasonably

total respiratory disability. These findings are therefore affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

exercised his discretion as trier-of-fact, in finding that the medical opinions of Drs. Narayan and Whitmore did not establish that claimant's total disability is due to pneumoconiosis. The administrative law judge reasonably found that Dr. Whitmore's answer to the Department of Labor questionnaire was ambiguous, because Dr. Whitmore did not provide a definitive answer to the question regarding the cause of the diagnosed impairment.³ Decision and Order at 12; Claimant's Exhibit 3; see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); see also *Goss v. Eastern Associated Coal Corp.*, 7 BLR 1-400 (1984). Moreover, the administrative law judge reasonably found that even had Dr. Whitmore clearly attributed claimant's impairment to pneumoconiosis, Dr. Whitmore did not explain his opinion. Decision and Order at 12; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-6 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). Additionally, a review of the record discloses substantial evidence for the administrative law judge's finding that neither Dr. Narayan's opinion nor Dr. Whitmore's treatment notes addressed the cause of claimant's disability. Decision and Order at 12; Claimant's Exhibits 2, 3.

Further, contrary to claimant's contention, the administrative law judge was not required to accord determinative weight to these opinions based on claimant's assertion that Drs. Narayan and Whitmore were his treating physicians, as the administrative law judge reasonably found that these opinions were not credible. *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-6; see also 20 C.F.R. §718.104(d). Because the administrative law judge validly discounted the only evidence supportive of claimant's burden and claimant does not otherwise challenge the administrative law judge's findings at Section 718.204(c), we affirm the administrative law judge's determination that the evidence of record is insufficient to establish that claimant's total disability is due to pneumoconiosis.

Since claimant failed to establish that his total respiratory disability is due to pneumoconiosis, a necessary element of entitlement under Part 718, an award of benefits is precluded. *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. Consequently, we need not address the remainder of claimant's arguments under Sections 718.202(a)(4) and 718.203(c).

Finally, claimant contends that because Dr. Hussain did not diagnose

³ In response to Question 3 on the questionnaire, "If the miner has a pulmonary impairment, is such impairment related to pneumoconiosis or does it have another etiology?" Dr. Whitmore responded, "Yes," without indicating which part of the question he was answering. Claimant's Exhibit 3.

pneumoconiosis, contrary to the administrative law judge's finding on this issue, his opinion regarding disability causation was not credible and, therefore, the Director failed to provide him with a complete and credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act. Claimant's Brief at 20-23. The Director responds that there was no Section 413(b) violation because the administrative law judge merely found Dr. Hussain's medical data outweighed by other evidence. Director's Brief at 4.

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406.

The record reflects that Dr. Hussain conducted a physical examination and the full range of testing required by the regulations, and addressed each element of entitlement on the Department of Labor examination form. 20 C.F.R. §§718.101(a), 718.104, 725.406(a); Director's Exhibits 11-13, 15. Dr. Hussain read claimant's chest x-ray as negative for pneumoconiosis, but, as the Director notes, the administrative law judge found Dr. Hussain's reading outweighed by the positive reading of a physician with superior radiological credentials, and determined that the x-rays established the existence of pneumoconiosis. Decision and Order at 10. Contrary to claimant's contention, this did not render Dr. Hussain's examination incomplete. Therefore, there is no merit to claimant's argument that the Director failed to fulfill his statutory obligation to provide claimant with a complete pulmonary evaluation.

Accordingly, we affirm the administrative law judge's Decision and Order-Denying Benefits.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge