BRB No. 06-0498 BLA

EDWARD H. GIBSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL CORPORATION	)	DATE ISSUED: 11/30/2006
	)	
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-Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (04-BLA-6458) 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).[1] The administrative law judge credited claimant with at least twenty-seven years and nine months of coal mine employment, as stipulated by the

[1] Claimant filed his claim for benefits on May 13, 2003. Decision and Order at 2, 3; Director's Exhibit 2.

parties. Decision and Order at 2; Transcript at 6. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and therefore insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).[2] Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief.[3]

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

Claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[4] Specifically, claimant argues that the administrative law judge erred

[2] All of the blood gas studies of record are nonqualifying, while all of the pulmonary function studies are qualifying. Director's Exhibits 16, 17, 24; Employer's Exhibit 2. The administrative law judge's summary disability causation finding was: "Accordingly, even if a total (pulmonary or respiratory) disability were found on the basis of the qualifying pulmonary function evidence, Claimant could not establish total disability *due to pneumoconiosis* under §718.204(c)." Decision and Order at 10.

[3] The administrative law judge's findings that the evidence was sufficient to establish at least twenty-seven years and nine months of coal mine employment, as stipulated by the parties, and that pneumoconiosis was not established at 20 C.F.R. §718.202(a)(1)-(3) are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 2, 4, 8-9. All x-ray readings are negative for pneumoconiosis. Director's Exhibits 21, 23, 25; Employer's Exhibit 1. The record contains several negative interpretations of a chest CAT scan dated June 22, 2005. Employer's Exhibits 1, 4, 5. At 20 C.F.R. §718.107, the administrative law judge considered only Dr. Scott's negative reading, in accordance with the Board's holdings in *Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006)(*en banc*)(recon. pending) and *Webber v. Peabody Coal Co.*, 23 BLR 1-123 (2006)(*en banc*)(recon. pending). Specifically, in *Harris* and *Webber*, the Board held, as the administrative law judge noted, that each party may proffer only one reading of each CAT scan in support of its affirmative case, and one reading in rebuttal of each reading submitted by the opposing party in support of its affirmative case. *See* Decision and Order at 5.

[4] A finding of either clinical pneumoconiosis, *see* 20 C.F.R. §718.201(a)(1), or legal pneumoconiosis, *see* 20 C.F.R. §718.201(a)(2), is sufficient to support a finding of pneumoconiosis pursuant to 20 C.F.R. § 718.202(a)(4). "Legal pneumoconiosis" includes

in weighing the opinions of Drs. Zaldivar and Tuteur over that of Dr. Kayi. Both Drs. Zaldivar and Tuteur opined that claimant does not have pneumoconiosis, Director's Exhibit 24; Employer's Exhibits 2, 3, 6, 7, while Dr. Kayi diagnosed pneumoconiosis. Director's Exhibits 14, 15. The administrative law judge accorded little weight to Dr. Kayi's opinion that claimant has pneumoconiosis, finding it is poorly reasoned, ambiguous, and internally inconsistent. Decision and Order at 9.

Initially, the administrative law judge considered Dr. Kayi's opinion. In his first report dated August 21, 2003, Dr. Kayi identified claimant's cardiopulmonary diagnosis as chronic bronchitis due to smoking, but then also identified a cause of claimant's pulmonary impairment as coal dust exposure, without explaining his opinion. Director's Exhibit 14 at 4. The administrative law judge accorded little weight to Dr. Kayi's opinion because no rationale was provided. Decision and Order at 9. An administrative law judge may give little weight to a medical opinion where the physician fails to explain how his findings support his diagnosis. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985). Thus, the administrative law judge rationally accorded little weight to Dr. Kayi's opinion that claimant has legal pneumoconiosis on this basis. Dr. Kayi also stated in this same report that claimant's coal dust exposure "could" make claimant's symptoms, dyspnea and cough, worse. Director's Exhibit 14 at 4. The administrative law judge found that this statement was, at best, equivocal. Decision and Order at 9. An administrative law judge may give little weight to a medical report due to its equivocal nature. *United States Steel Mining Co. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). Therefore, the administrative law judge rationally accorded little weight to Dr. Kayi's opinion, finding it equivocal.

We thus affirm the administrative law judge's treatment of Dr. Kayi's opinion as the administrative law judge provided two valid reasons for according little weight to Dr. Kayi's opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382, 1-383 n. 4 (1983). As the administrative law judge rationally declined to accord more weight to the only opinion supportive of claimant's position at Section 718.202(a)(4), we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Consequently, we affirm the administrative law judge's finding at Section 718.202(a).

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at Section 718.202(a), an essential

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any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge