BRB No. 99-1312 BLA

ALFRED R. NIDIFFER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WESTMORELAND COAL 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-Denial of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Vincent J. Carroll, Richlands, Virginia, for claimant.

Douglas A. Smoot and Kathy L. Snyder (Jackson & Kelly PLLC), Charleston, West Virginia.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order-Denial of Benefits (98-BLA-1271) of Administrative Law Judge Richard T. Stansell-Gamm 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). The administrative law judge concluded that the instant claim was a duplicate claim and thus governed by the standard enunciated by the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, in *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, *rev'g en banc* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995). Decision and Order at 3-4. The administrative law judge found the existence of pneumoconiosis

previously established through the parties' stipulation, but that the newly submitted evidence, *i.e.*, that evidence submitted subsequent to the previous denial, failed to establish the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). Decision and Order at 5-21. The administrative law judge further found that the newly submitted medical evidence also failed to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a)-(c). Decision and Order at 6-21. Accordingly, the administrative law judge concluded that the newly submitted evidence failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 and thus denied benefits.

On appeal, claimant contends that the administrative law judge erred in his consideration of the medical evidence as such evidence demonstrates the presence of totally disabling pneumoconiosis as well as cor pulmonale and complicated pneumoconiosis. Employer, in response, urges that the administrative law judge's denial of benefits be affirmed. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this appeal.

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

Claimant contends that the medical evidence of record supports a finding of complicated pneumoconiosis pursuant to Section 718.304. Claimant asserts that the newly submitted x-ray evidence, the medical opinions of his treating physicians and the CT scan evidence of record support a finding of complicated pneumoconiosis.

In order to establish the existence of complicated pneumoconiosis and thus invocation of the irrebutable presumption of total disability due to pneumoconosis pursuant to Section 718.304, an administrative law judge must consider all relevant evidence found at each subsection pursuant to Section 718.304(a)-(c), and then weigh together such evidence prior to invocation of the presumption. *See Lester v. Director, OWCP,* 993 F.2d 1143, 17 BLR 2-114 (4th Cir.1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-131 (1991)(*en banc*). In the instant case, the administrative law judge concluded that the newly submitted x-ray evidence of record failed to support a finding of complicated pneumoconiosis pursuant to Section 718.304(a).[1] The administrative law judge permissibly found that the weight of the

[1]Section 718.304(a) states, in pertinent part, that an x-ray demonstrates complicated

readings by the physicians with the dual qualifications of B-reader and board certified radiologist[2] failed to support a finding of complicated pneumoconiosis. The administrative law judge concluded found that, while the dually-qualified Dr. Alexander's x-ray interpretation supported a finding of complicated pneumoconiosis pursuant to Section 718.304(a), Claimant's Exhibit 45, the remaining interpretations by the dually-qualified physicians, specifically those of Drs. Kim, Wheeler and Scott, Employer's Exhibit 3, were all negative for the existence of complicated pneumoconiosis and that these readings outweighed Dr. Alexander's interpretation. Contrary to claimant's assertion, the administrative law judge could properly rely on the weight of the readings by physicians with superior qualifications and in the instant case the administrative law judge properly concluded that the weight of such readings was negative for the existence of complicated pneumoconiosis. *See Vance v. Eastern Associated Coal Corp.*, 8 BLR 1-65 (1985); *Aimone v. Morrison Knudson Co.*, 8 BLR 1-32 (1985); *see also Melnick*, *supra*; *see generally Lester*, *supra*. Further, contrary to claimant's contention, the administrative law judge, in a permissible exercise of his discretion, concluded that Dr. Caffrey's opinion that the biopsy slides of record did not support a finding of complicated pneumoconiosis, constituted a well-reasoned medical opinion. *See Clark v. Karst-Robbins Coal Co.*,

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pneumoconiosis when it "...yields one or more large opacities (greater than one centimeter in diameter) and would be classified in Category A, B,or C...." 20 C.F.R. §718.304.

[2]A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*., 8 BLR 1-211 (1985). A "board-certified radiologist" is a physician who is certified in radiology or diagnostic roentgenology by the American Board of Radiology.

12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp*. 8 BLR 1-46 (1985). Accordingly, we affirm the administrative law judge's determination that the biopsy evidence of record did not support a finding of complicated pneumoconiosis pursuant to Section 718.304(b). *See Melnick, supra*; *see also Lester, supra*.

We have held that, while not specifically provided for in the regulations, CT scans constitute relevant evidence of the presence of complicated pneumoconiosis, that are to be considered under Section 718.304(c). *See Melnick, supra*. In concluding that the CT scans of record failed to support a finding of complicated pneumoconiosis pursuant to Section 718.304(c), the administrative law judge concluded that none of the physicians who reviewed the CT scan evidence concluded that while the physicians who reviewed such evidence generally agreed that the CT scan demonstrated a two centimeter lesion, no physician concluded that such a lesion indicated complicated pneumoconiosis. Decision and Order at 10. The administrative law judge found that as the weight of the CT scan evidence failed to demonstrate the existence of complicated pneumoconiosis, claimant was unable to carry his burden pursuant to Section 718.304(c). Decision and Order at 10. Contrary to claimant's assertion that those physicians reviewing the CT scan evidence "do not convincingly overcome the evidence presented in the CT scans," Claimant's Brief at 4, the burden of demonstrating complicated pneumoconiosis through CT scan evidence rests affirmatively with claimant. *See Melnick*, *supra*; *see also Trent v. Director, OWCP*, 11 BLR 1-26, 1-28 (1987). Accordingly, we affirm the administrative law judge's conclusion that the CT scan evidence of record failed to support a finding of complicated pneumoconiosis pursuant to Section 718.304(c).

Finally, with regard to the issue of complicated pneumoconiosis, claimant asserts that the medical opinion evidence, specifically those opinions of treating physicians Dr. Kapadia and Paranthaman, both of whom diagnosed the presence of complicated pneumoconiosis, Director's Exhibits, 7, 9, 21; Claimant's Exhibits 2, 47, 48, support a finding of complicated pneumoconiosis and that the opinions were entitled to greater weight based on their status as treating physicians. In finding that the medical opinion evidence was not supportive of a finding of complicated pneumoconiosis, the administrative law concluded, in a permissible exercise of his discretion, that Dr. Kapadia's opinion of complicated pneumoconiosis was entitled to little weight inasmuch as the physician failed to explain the basis of his conclusions. *See York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Cooper v. United States Steel Corp.*, 7 BLR 1-842 (1985); *White v. Director, OWCP*, 6 BLR 1-368, 1-371 (1983). The administrative law judge further found that, while Dr. Paranthaman provided a well-reasoned, well-documented opinion diagnosing the presence of the disease, the

opinion was outweighed by the opinions of Dr. Dahhan, who concluded that claimant did not suffer from the presence of complicated pneumoconiosis, Director's Exhibit 17; Employer's Exhibits 4, 5. The administrative law judge found that Dr. Dahhan had the benefit of reviewing the entirety of relevant evidence of record, including Dr. Paranthaman's opinions, and thus the administrative law judge permissibly concluded that Dr. Dahhan's opinion was entitled to great weight as a better reasoned and better documented opinion. *See Clark*, *supra*; *Peskie*; *Lucostic*, *supra*. Further still, the administrative law judge gave greater weight to the conclusions of Dr. Castle, who opined that claimant did not suffer from complicated pneumoconiosis, Director's Exhibits 20; Employer's Exhibits 6, 9, based on the physician's superior credentials, *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers,* 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985), and the physician providing a well-reasoned, well-documented opinion, *see Clark*, *supra*; *Peskie*, *supra*; *Lucostic*, *supra*.

Contrary to claimant's assertion, the administrative law judge is not duty bound to accord greater weight to opinions of treating physicians, *see Grizzle v. Pickands Mather and Co.,* 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *see also Thorn v. Itmann Coal Co.*, 3 F.3d 713, 18 BLR 2-16 (4th Cir. 1993), and need not accord lesser weight to the opinions of physicians who did not perform an examination, *see Wetzel*, *supra*; *King v. Cannelton Industries, Inc.*, 8 BLR 1-146 (1985); *Eastham v. Consolidation Coal Co.*, 7 BLR 1-582 (1984). While a treating physician's opinion may deserve special consideration, *see Grizzle*, *supra*, the administrative law judge, in the instant case, addressed the treating physician status of Drs. Paranthaman and Kapadia, and, in a permissible exercise of his discretion, provided affirmable bases for according less weight to or discrediting these physician's opinions. *See Grizzle, supra*. Accordingly, we affirm the administrative law judge's determination that the medical opinion evidence did not demonstrate the presence of complicated pneumoconiosis pursuant to Section 718.304(c), and we further affirm the administrative law judge's determination that claimant was unable to establish, through the newly submitted evidence, entitlement to the irrebutable presumption of total disability due to pneumoconosis pursuant to Section 718.304. *See Melnick*, *supra*; *see also Lester*, *supra*.

Claimant next contends that the evidence of record establishes the presence of a totally disabling respiratory impairment pursuant to Section 718.204(c). Claimant asserts that the administrative law judge erred in failing to address relevant qualifying pulmonary function study evidence, specifically the most recent study of record, Claimant's Exhibit 44, which is sufficient to demonstrate total disability under

the Act, and relevant qualifying blood gas study evidence, Claimant's Exhibit 8.[3] Claimant further asserts that the administrative law judge failed to address the findings of cor pulmonale rendered by Dr. Armstrong, Director's Exhibits 21; Claimant's Exhibits 3, 49.

In finding that the newly submitted evidence failed to demonstrate the presence of a totally disabling respiratory impairment pursuant to Section 718.204(c)(1) and (2), the administrative law judge found, correctly, that as there is no newly submitted qualifying pulmonary function evidence and blood gas study evidence, Director's Exhibits 8, 10, 17, 21, claimant is precluded from demonstrating total disability at these subsections. *See* 20 C.F.R. §718.204(c)(1), (2).

We further affirm the administrative law judge's determination that the newly submitted evidence failed to demonstrate, pursuant to Section 718.204(c)(3) cor pulmonale with right-sided congestive heart failure. Contrary to claimant's assertion, the administrative law judge addressed Dr. Armstrong's conclusions, and in a permissible exercise of his discretion, accorded little weight to the opinion as the physician failed to provide an adequate explanation for his conclusions. *See York*, *supra*; *Oggero*, *supra*; *White*, *supra*. Moreover, the administrative law judge also acknowledged that Dr. Paranthaman, and Dr. Kapadia diagnosed the presence of cor pulmonale with right-sided congestive heart failure, Director's Exhibits, 7, 9, 21; Claimant's Exhibits 2, 47, 48, that Dr. Smiddy, Claimant's Exhibit 41 "concurred with Dr. Kapadia's diagnosis," Decision and Order at 20, and that Dr. Ramakrishnan found that claimant demonstrated a condition, "suggestive" of cor pulmonale with right sided congestive heart failure, but permissibly concluded that these opinions were outweighed by the opinions of Drs. Dahhan, Castle, Fino and Morgan, Director's Exhibit 17, 20; Employer's Exhibits 3, 4-6, 9, all of whom specifically ruled out the presence of cor pulmonale with right-sided congestive heart failure, because the opinions of the latter physicians were best supported by the underlying documentation of record, *see Clark*, *supra*; *Peskie*, *supra*; *Lucostic*. Accordingly, the administrative law judge properly determined that the weight of the

[3]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. §718.204, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

newly submitted evidence failed to demonstrate the presence of cor pulmonale with right-sided congestive heart failure pursuant to Section 718.204(c)(3). *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

Finally, we affirm the administrative law judge's determination that the newly submitted medical opinion evidence failed to demonstrate the presence of a totally disabling respiratory impairment pursuant to Section 718.204(c)(4). In finding that claimant failed to demonstrate the presence of a totally disabling respiratory impairment at this subsection, the administrative law judge initially determined that, based on the evidence of record, claimant's most recent coal mine employment consisted of moderate to heavy manual labor. Decision and Order at 21. The administrative law judge permissibly concluded that the opinions of Drs. Dahhan, Fino, Castle and Morgan, all of whom concluded that claimant suffered from no totally disabling respiratory impairment were again entitled to greatest weight as they were the best reasoned and documented opinions of record. *See Clark*, *supra*; *Peskie*, *supra*; *Lucostic*, *supra*. Contrary to claimant's assertion, and as discussed, *supra*, the administrative law judge need not accord greater weight to the opinion of Dr. Kapadia, merely based on the physician's status as treating physician, *see Grizzle, supra*; *Thorn*, *supra*. Moreover, contrary to claimant's assertion that the administrative law judge "made no finding on how [claimant] could perform his usual and customary duties," Claimant's Brief at 7, the burden affirmatively rests with claimant to demonstrate that claimant can not return to his previous coal mine employment due to a respiratory impairment, *see Ondecko*, *supra*; *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986) *aff'd on recon.*, 9 BLR 1-104 (1986)(*en banc).* Inasmuch as the administrative law judge has addressed the entirety of relevant of medical evidence at Section 718.204(c)(4) and provided an affirmable basis for his determinations we affirm his conclusion that the medical opinion evidence failed to demonstrate the presence of a totally disabling respiratory impairment at Section 718.204(c)(4). *See Ondecko, supra.* We thus affirm the administrative law judge's determination that the newly submitted medical evidence failed to establish the existence of a totally disabling respiratory impairment pursuant to Section 718.204(c), *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp*. 9 BLR 1-195 (1986), and we affirm the administrative law judge's determination that the newly submitted medical evidence failed to establish a material change in conditions pursuant to Section 725.309. *See Rutter*, *supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge