BRB No. 01-0105 BLA

JOHN L. MAULDIN, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL CORPORATION	)	
	)	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 on Remand of Richard T. Stansell-Gamm, 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: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (88-BLA-1645) of Administrative Law Judge Richard T. Stansell-Gamm 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). This case is before the Board for the

[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

fourth time. Claimant filed a claim on August 3, 1983. By Decision and Order dated May 9, 1989, Administrative Law Judge John S. Patton, after crediting claimant with twenty-six years of coal mine employment, applied the "true doubt" rule and found that the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) (2000). Judge Patton also found that claimant was totally disabled pursuant to 20 C.F.R. §718.204(c) (2000). Accordingly, Judge Patton awarded benefits. By Decision and Order dated March 18, 1992, the Board affirmed Judge Patton's length of coal mine employment finding as unchallenged on appeal. *Mauldin v. Eastern Associated Coal Corp.*, BRB No. 89-1849 BLA (Mar. 18, 1992) (unpublished). The Board also affirmed Judge Patton's finding that the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) (2000). *Id.* The Board further affirmed Judge Patton's findings that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1) and (c)(2) (2000). *Id.* The Board, however, vacated Judge Patton's finding that the medical opinion evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4) (2000) and remanded the case for further consideration. *Id.* The Board also held that Judge Patton erred in not addressing whether claimant's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b) (2000) and whether claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). *Id.*

Due to Judge Patton's unavailability, Administrative Law Judge Robert G. Mahony

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C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

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). The Board subsequently issued an order requesting supplemental briefing in the instant case. 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*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). By Order dated August 24, 2001, the Board rescinded its Order requiring the parties to submit briefs on the issue of the impact of the amended regulations to this case.

[2]Inasmuch as there was no evidence of cor pulmonale with right sided congestive heart failure, the Board held that any error on Administrative Law Judge John S. Patton's part in failing to address 20 C.F.R. §718.204(c)(3) (2000) was harmless. *Mauldin v. Eastern Associated Coal Corp.*, BRB No. 89-1849 BLA (Mar. 18, 1992) (unpublished).

reconsidered the claim on remand. Judge Mahony found that claimant's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b) (2000). Judge Mahony further found that the evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000) and that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). Accordingly, Judge Mahony awarded benefits. By Decision and Order dated February 27, 1995, the Board affirmed Judge Mahony's finding pursuant to 20 C.F.R. §718.203(b) as unchallenged on appeal. *Mauldin v. Eastern Associated Coal Corp.*, BRB No. 93-0818 BLA (Feb. 27, 1995) (unpublished). The Board also affirmed Judge Mahony's findings that the evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000) and that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). Accordingly, the Board affirmed Judge Mahony's award of benefits. *Id.*

Employer subsequently filed a motion for reconsideration with the Board. By Decision and Order on Reconsideration dated January 14, 1997, the Board vacated Judge Patton's finding that the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and remanded the case for further consideration. *Mauldin v. Eastern Associated Coal Corp.*, BRB No. 93-0818 BLA (Jan. 14, 1997) (Decision and Order on Recon.) (unpublished). Although the Board reaffirmed Judge Mahony's finding that the evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000), the Board held that it could not affirm Judge Mahony's finding that the evidence was sufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000) in light of its decision to vacate Judge Patton's finding pursuant to 20 C.F.R. §718.202(a)(1) (2000). *Id.*

Due to Judge Mahony's unavailability, Administrative Law Judge Richard T. Stansell-Gamm (the administrative law judge) reconsidered the claim on remand. The administrative

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[3]Employer, in a footnote, noted its disagreement with the Board's previous affirmance of Judge Patton's finding that the x-ray evidence was sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) (2000). Employer contended that Judge Patton's finding was based upon the "true doubt" rule. The Board noted that the United States Supreme Court had invalidated the "true doubt" rule. *Mauldin v. Eastern Associated Coal Corp.*, BRB No. 93-0818 BLA (Feb. 27, 1995) (unpublished). The Board, however, held that its affirmance of Judge Patton's finding was not based on Judge Patton's application of the "true doubt" rule. *Id.* The Board noted that, in affirming Judge Patton's finding at Section 718.202(a)(1) (2000), the Board had held that Judge Patton acted properly in relying upon the majority of physicians who interpreted the films as negative. *Id.*

[4]Upon further consideration, the Board agreed with employer that Judge Patton's ultimate conclusion could not be affirmed in light of his reliance upon the "true doubt" rule. *Mauldin v. Eastern Associated Coal Corp.*, BRB No. 93-0818 BLA (Jan. 14, 1997) (Decision and Order on Recon.) (unpublished).

law judge found that the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) (2000). The administrative law judge further found that the evidence was sufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). Accordingly, the administrative law judge awarded benefits. By Decision and Order dated April 27, 1999, the Board vacated the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1) and remanded the case for further consideration. *Mauldin v. Eastern Associated Coal Corp.*, BRB No. 98-0142 BLA (Apr. 27, 1999) (unpublished). If, on remand, the administrative law judge were to find that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) (2000), the Board instructed the administrative law judge to consider whether the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (a)(3) and (a)(4) (2000). *Id.* The Board also vacated the administrative law judge's finding pursuant to 20 C.F.R. §718.204(b) (2000). *Id.*

On remand, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis. Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis. Claimant also argues that the administrative law judge erred in failing to consider whether claimant's total disability was due to his pneumoconiosis. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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).

After consideration of the administrative law judge's Decision and Order on Remand, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. In his consideration of whether the evidence was sufficient to establish the existence of pneumoconiosis, the administrative law judge found that the x-ray evidence was

[5]The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that although Section 718.202(a) enumerates four distinct methods of establishing pneumoconiosis, all types of relevant evidence must be weighed together to determine whether a miner suffers from the disease. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000); *see also Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). The administrative law judge, therefore, recognized that he was required to evaluate all of the evidence in his consideration of whether the evidence was sufficient to establish the existence of pneumoconiosis. *See*

insufficient to establish the existence of pneumoconiosis. Decision and Order at 14-16. Inasmuch as no party challenges this finding, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Since the record does not contain any biopsy or autopsy evidence, claimant is precluded from establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). The administrative law judge also properly found that claimant is not entitled to any of the statutory presumptions arising under 20 C.F.R. §718.202(a)(3).

In his consideration of whether the medical opinion evidence was sufficient to establish the existence of pneumoconiosis, the administrative law judge noted that Dr. Zaldivar, in addition to conducting a physical examination of claimant, had the advantage of reviewing all of the medical evidence of record, including all of the x-ray interpretations, test results and medical opinions. Decision and Order at 17; Employer's Exhibit 13. The administrative law judge, therefore, properly credited Dr. Zaldivar's opinion that claimant did not suffer from pneumoconiosis over Dr. Cardona's contrary opinion because he found that Dr. Zaldivar's opinion was based upon more comprehensive documentation. *See Sabett v. Director, OWCP*, 7 BLR 1-

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Decision and Order at 14.

[6]The administrative law judge stated that:

> [O]f nine radiographic films of [claimant's] chest, only two x-rays (September 13, 1983 and July 2, 1985) support a finding of pneumoconiosis. All the other seven x-rays (January 15, 1985, July 8, 1985, July 17, 1985, November 13, 1986, September 15, 1987, September 16, 1987, and November 16, 1988) are negative for pneumoconiosis. The preponderance of the chest x-ray interpretations indicates that [claimant] does not have pneumoconiosis.

Decision and Order at 16.

[7]Because there is no evidence of complicated pneumoconiosis in the record, the Section 718.304 presumption is inapplicable. *See* 20 C.F.R. §718.304. The Section 718.305 presumption is inapplicable because claimant filed the instant claim after January 1, 1982. *See* 20 C.F.R. §718.305(e). Finally, inasmuch as the instant claim is not a survivor's claim, the Section 718.306 presumption is also inapplicable. *See* 20 C.F.R. §718.306. Consequently, claimant is precluded from establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(3).

[8]The administrative law judge accorded less weight to the opinions of Drs. Patel and Daniel because he found that their respective diagnoses of pneumoconiosis (which the administrative law judge accurately noted were based primarily on one positive x-ray

299 (1984); Director's Exhibit 7; Employer's Exhibit 13. The administrative law judge also properly accorded greater weight to Dr. Zaldivar's opinion that claimant did not suffer from pneumoconiosis because he found that his opinion was better supported by the objective evidence. *See generally Voytovich v. Consolidation Coal Co.*, 5 BLR 1-400 (1982); Decision and Order at 17; Employer's Exhibit 13. Inasmuch as it is based upon substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis. 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

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interpretation) were inconsistent with all the medical evidence of record. Decision and Order at 16-17; Director's Exhibit 8; Claimant's Post-Hearing Exhibit. The administrative law judge's weighing of the evidence is consistent with the requirements of *Compton*. Inasmuch as no party specifically challenges the administrative law judge's discrediting of the opinions of Drs. Patel and Daniel on this basis, this finding is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[9]We reject claimant's contention that the administrative law judge erred in finding that Dr. Zaldivar's opinion was well reasoned. The administrative law judge found that Dr. Zaldivar's opinion that claimant did not suffer from pneumoconiosis was "the best reasoned assessment in the record." Decision and Order at 17. Dr. Zaldivar rendered a negative interpretation of claimant's November 16, 1988 x-ray. Employer's Exhibit 13. On physical examination, Dr. Zaldivar noted that claimant's lungs were clear to auscultation without wheezes, crackles or rales. *Id.* Dr. Zaldivar, therefore, opined that claimant did not suffer from any lung disease. *Id.* The administrative law judge properly relied upon Dr. Zaldivar's opinion as reasoned. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge