BRB No. 01-0187 BLA

HOMER L. ANDERSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
CLINCHFIELD COAL COMPANY	)	
	)	
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 Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

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

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia.

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

PER CURIAM:

Claimant, by counsel, appeals the Decision and Order Denying Benefits (2000-BLA-0602) of Administrative Law Judge Daniel F. Solomon 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] This case is before the Board for the fourth time after the denial of claimant's third

[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.

request for modification pursuant to 20 C.F.R. §725.310.

Claimant filed his application for benefits on August 22, 1978. Director's Exhibit 1. His claim was first denied on August 24, 1988 by Administrative Law Judge John S. Patton, who credited claimant with twenty-two years of coal mine employment and found that claimant did not establish invocation of the interim presumption of total disability due to pneumoconiosis by any of the methods set forth at 20 C.F.R. §727.203(a)(1)-(a)(4). Director's Exhibit 53. After unsuccessful appeals to both the Board and the United States Court of Appeals for the Fourth Circuit, Director's Exhibits 57, 59, claimant filed a timely request for modification. Director's Exhibit 61. The modification petition was denied on December 1, 1992 by Administrative Law Judge Edward J. Murty, Jr., who found that the medical evidence did not establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a). Director's Exhibit 88. Judge Murty's decision denying benefits was affirmed on appeal by both the Board and the United States Court of Appeals for the Fourth Circuit. Director's Exhibits 93, 96. Thereafter, claimant filed a second request for modification. Director's Exhibit 97. Judge Murty denied the second request for modification on July 7, 1997, finding that the medical evidence did not establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a) and therefore demonstrated neither a mistake of fact nor a change in conditions. Director's Exhibit 123. Judge Murty's 1997 decision denying benefits was affirmed on appeal by both the Board and the United States Court of Appeals for the Fourth Circuit. Director's Exhibits 129, 134.

On June 3, 1999, claimant timely filed his third and current request for modification. Director's Exhibit 135. The District Director of the Office of Worker's Compensation Programs denied benefits and claimant requested a hearing, which was held by Administrative Law Judge Daniel F. Solomon on August 2, 2000.

In the Decision and Order Denying Benefits, the administrative law judge found that neither a mistake in fact nor change in conditions was established. The administrative law judge found that the weight of the x-ray readings viewed in light of

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Pursuant to a lawsuit challenging revisions to forty-seven 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*, 145 F.Supp.2d 1 (D.D.C. 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*, 160 F.Supp.2d 47 (D.D.C. 2001). Because of the court's decision, on August 10, 2001 the Board rescinded its supplemental briefing order in this case.

the readers' radiological qualifications did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §727.203(a)(1), and that the weight of the pulmonary function and blood gas studies did not establish the presence of a chronic respiratory or pulmonary impairment pursuant to 20 C.F.R. §727.203(a)(2), (a)(3). The administrative law judge additionally found that the medical opinions submitted by claimant were insufficiently documented and reasoned to establish the presence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §727.203(a)(4). Thus, the administrative law judge found that claimant did not establish invocation of the interim presumption of total disability due to pneumoconiosis. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that he has invoked an "irrebuttable presumption of cor pulmonale." Claimant's Brief at 3, 4. Claimant argues further that the administrative law judge erred in weighing the medical opinion evidence pursuant to 20 C.F.R. §727.203(a)(4) because he did not discuss the exertional requirements of claimant's usual coal mine employment and did not give sufficient weight to the opinions of claimant's treating physicians. Employer responds, urging affirmance of the denial of benefits, and the Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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 alleges generally that he has established invocation of an "irrebuttable presumption of cor pulmonale." Claimant's Brief at 4. The Act and regulations contain no such presumption. To the extent claimant means that the administrative law judge erred in declining to credit a treating physician's diagnosis of cor pulmonale in finding that the medical opinion evidence did not establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §727.203(a)(4), claimant's contention lacks merit.

Cor pulmonale is defined as "heart disease due to pulmonary hypertension

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[2] The administrative law judge alternatively found that, assuming invocation were established, employer rebutted the presumption of total disability due to pneumoconiosis, pursuant to 20 C.F.R. §727.203(b)(3), (b)(4). Decision and Order at 19-20.

[3] We affirm as unchallenged on appeal the administrative law judge's findings that the weight of the chest x-ray readings, pulmonary function studies, and blood gas studies did not establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(1)-(a)(3). *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

secondary to disease of the blood vessels of the lungs." *Dorland's Illustrated Medical Dictionary* 358 (25th ed. 1974). As highlighted by the administrative law judge, the physicians of record defined cor pulmonale more specifically as right-sided heart failure caused by chronic lung disease. Employer's Exhibits 2 at 10-11, 3 at 7, 4 at 19. The administrative law judge considered Dr. Emory Robinette's diagnosis of cor pulmonale in light of the opinions of Drs. Roger McSharry, James Castle, and Gregory Fino that claimant does not have right-sided heart failure caused by lung disease, but rather suffers from failure of both sides of the heart caused by severe heart disease. Director's Exhibit 135; Employer's Exhibits 1-4. The administrative law judge permissibly accorded greater weight to the opinions of Drs. McSharry, Castle, and Fino in view of their superior credentials in Pulmonary Medicine and because he found their opinions to be better supported by medical testing and consistent with the opinion of claimant's other treating physician, Dr. Michael Ulrich, who diagnosed severe cardiomyopathy. Director's Exhibits 135, 138; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). Therefore, we affirm the administrative law judge's finding that the medical opinions do not establish that claimant has cor pulmonale.

Claimant asserts that the administrative law judge did not discuss the exertional requirements of claimant's usual coal mine employment before crediting the opinions of Drs. McSharry, Castle, and Fino that claimant is not totally disabled by a respiratory or pulmonary impairment. Claimant's Brief at 2, 4. Review of the record indicates that these physicians concluded that claimant does not suffer from any respiratory or pulmonary impairment. Employer's Exhibits 1-4. There is no need to compare such an opinion with the physical requirements of claimant's usual coal mine employment. *See Lane v. Union Carbide Corp*., 105 F.3d 166, 172, 21 BLR 2-34, 2-45-46 (4th Cir. 1997). Moreover, Drs. McSharry and Fino discussed the specific physical requirements of claimant's job as a mechanic in rendering their opinions that he is not totally disabled. Director's Exhibit 144 at 3, 5; Employer's Exhibits 2 at 4-5, 4 at 7; *see Lane, supra*; *Walker v. Director, OWCP*, 927 F.2d 181, 184, 15 BLR 2-16, 2-22 (4th Cir. 1991). Therefore, we reject claimant's argument that the administrative law judge improperly relied on the opinions of Drs. McSharry, Fino, and Castle.

Finally, claimant alleges that the administrative law judge did not accord sufficient weight to the opinions of claimant's treating physicians, Drs. Robinette and

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[4] The record indicates that Dr. Robinette is Board-certified in Internal Medicine only, whereas Drs. McSharry, Castle, and Fino are Board-certified in both Internal Medicine and Pulmonary Disease. Director's Exhibit 135; Employer's Exhibits 1-3.

[5] Cardiomyopathy refers to "primary myocardial disease, often of obscure or unknown etiology." *Dorland's Illustrated Medical Dictionary* 264 (24th ed. 1974).

Ulrich, that claimant is totally disabled by a respiratory impairment. Claimant's Brief at 2, 3. An administrative law judge need not accord determinative weight to a treating physician's opinion. *See Hicks, supra*; *Akers, supra*; *Berta v. Peabody Coal Co*., 16 BLR 1-69, 1-70 (1992). Here, the administrative law judge considered the opinions of Drs. Robinette and Ulrich, diagnosing claimant as totally disabled by a respiratory impairment, but permissibly found their opinions entitled to less weight than the contrary opinions of Drs. McSharry, Castle, and Fino, which the administrative law judge found to be better documented and reasoned and more reliable based on the authoring physicians' superior credentials. *See Hicks, supra*; *Akers, supra*; *Trumbo v. Reading Anthracite Co*., 17 BLR 1-85, 1-88-89 and n.4 (1993). Substantial evidence supports the administrative law judge's findings, and claimant presents no basis to disturb the administrative law judge's determination. *See Mays v. Piney Mountain Coal Co*., 21 BLR 1-59, 1-64 (1997)(Dolder, J., concurring and dissenting). Therefore, we affirm the administrative law judge's finding that claimant did not establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(4).

Based on our review of the administrative law judge's Decision and Order and the record, in light of the specific contentions raised on appeal, we affirm the administrative law judge's findings that claimant did not establish invocation of the interim presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §727.203(a)(1)-(a)(4), and we therefore affirm the administrative law judge's attendant finding that no mistake in fact or change in conditions was established pursuant to 20 C.F.R. §725.310. *See Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge