

BRB No. 01-0210 BLA

LONNIE MATHIS, JR.)		
)		
Claimant-Petitioner)		
)		
v.)		
)		
ISLAND CREEK 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 on Third Remand of Clement J. Kichuk, Administrative Law Judge, United States Department of Labor.

Roger D. Forman (Forman & Crane, L.C.), Charleston, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Third Remand (93-BLA-1326) of Administrative Law Judge Clement J. Kichuk on a claim filed pursuant to the provisions of

¹ Claimant is Lonnie Mathis, Jr., the miner, who filed his application for benefits on July 16, 1992. Director's Exhibit 1.

² Based on the unavailability of Administrative Law Judge Frederick D. Neusner, this case was assigned to Administrative Law Judge Clement J. Kichuk.

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, which was adjudicated pursuant to 20 C.F.R. Part 718 (2000), is on appeal to the Board for the fourth time. The procedural history of this case is not dispositive herein and is set forth in the Board's prior decision, *Mathis v. Island Creek Coal Co.*, BRB No. 99-0497 BLA, *slip op.* at 1-2 (Feb. 10, 2000)(unpub.). In that decision, the Board vacated the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis and remanded the case for the administrative law judge to address Dr. Carillo's opinion and reconsider Dr. Rasmussen's opinion. *Mathis, slip op.* at 3-4. The Board further instructed the administrative law judge to reassess the conflicting medical opinion evidence and underlying documentation in accordance with the principles articulated in *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); and *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). *Id.* at 4. After considering all of the medical opinions of record on remand, the administrative law judge determined that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4)(2000). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erroneously relied on the opinion of Dr. Castle to find that the existence of pneumoconiosis was not established. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating his intention not to participate in this appeal.

3 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.

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*, 160 F. Supp. 2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by claimant regarding the impact of the challenged regulations.

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 the applicable law, they are binding upon this Board and may not be disturbed. 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, a claimant must establish that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that his pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant argues that, in evaluating the medical opinion evidence, the administrative law judge erroneously credited the opinion of Dr. Castle in finding that the existence of pneumoconiosis was not established because Dr. Castle's opinion, that coal mine employment does not result in obstructive lung disease, is contrary to *Stiltner* and hostile to the Act.

In *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995), the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, noted that chronic obstructive lung disease was encompassed within the definition of pneumoconiosis under the Act, and therefore vacated an administrative law judge's finding relying on physicians' opinions that the miner did not suffer from pneumoconiosis because their opinions were based on the erroneous assumption that obstructive disorders cannot be caused by coal mine employment. The court subsequently clarified its holding in *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996), however, and explained that administrative law judges are not precluded from relying on physicians' opinions that, while noting the absence of a restrictive impairment, are not based upon the erroneous assumption that coal mine employment can never cause chronic obstructive pulmonary disease.

A review of Dr. Castle's reports and deposition testimony reveals that, contrary to claimant's argument, Dr. Castle did not render an opinion inimical to the Act or the decisions in *Stiltner* and *Warth*. After reciting the legal definition of pneumoconiosis as defined in the Act, *see* 20 C.F.R. §718.201(a), (b), during his deposition on February 22, 1994, Dr. Castle opined that there is insufficient objective evidence to justify a diagnosis of coal worker's

4 Because the miner's most recent coal mine employment occurred in the state of West Virginia, the case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989); Director's Exhibit 2.

pneumoconiosis in this case. Employer's Exhibits 12, 16. Although Dr. Castle believed, generally, that an obstructive problem does not result from coal workers' pneumoconiosis, he opined, "dealing not with statistics but specifically this man, he has an obstructive problem related to his tobacco usage," which is in no way related to his coal workers' pneumoconiosis. Employer's Exhibit 16 at 57. Dr. Castle testified further that his opinion was not based on either the absence of a restrictive impairment or a single diagnostic tool, but rather on claimant's physical examinations, medical and smoking histories, chest x-rays, and pulmonary function and arterial blood gas testing. Employer's Exhibit 16 at 58.

We affirm the administrative law judge's crediting of Dr. Castle's opinion inasmuch as this determination is rational, supported by substantial evidence, and rendered in accordance with *Stiltner*. The administrative law judge properly discussed the distinction between clinical and legal pneumoconiosis and stated, "It is of some import that a clinician may rule out clinical pneumoconiosis on the belief that it manifests itself as a restrictive defect, whereas the legal definition of the disease includes obstructive defects." Decision and Order on Third Remand at 13; see *Stiltner, supra*; *Warth, supra*. The administrative law judge properly found that although Dr. Castle explained that a difference of opinion among pulmonary clinicians existed as to whether pneumoconiosis was a purely restrictive defect, his opinion in this case was based on claimant's complete medical picture, and was not based on any one finding taken in isolation. See *Stiltner, supra*; *Akers, supra*; Decision and Order on Third Remand at 13. Accordingly, the administrative law judge, within a proper exercise of his discretion, found that Dr. Castle's opinion, that claimant exhibited no physical or objective evidence consistent with coal workers' pneumoconiosis, was entitled to greater probative weight based on Dr. Castle's superior pulmonary expertise, the detail of his analysis, and the underlying objective documentation supporting his conclusions. See *Hicks, supra*; *Akers, supra* (administrative law judge should consider qualifications of respective physicians, explanation of their medical opinions, documentation underlying their medical judgments, and sophistication and bases of their diagnoses); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985). Furthermore, the administrative law judge permissibly found that the opinion of Dr. Castle, as corroborated by that of Dr. Zaldivar, was more persuasive inasmuch as Dr. Castle reviewed the entire medical evidence of record in forming his opinion, fully explained the basis for his conclusions, and discussed the difference between clinical and legal pneumoconiosis. See *Stiltner, supra*; *Akers, supra*; *Clark, supra*; *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Rickey v. Director, OWCP*, 7 BLR 1-106 (1984). More specifically, the administrative law judge rationally determined that Dr. Castle's opinion was based on non-qualifying pulmonary function and arterial blood gas studies, normal diffusing capacity, x-ray readings, an absence of physical conditions consistent with an interstitial process, such as rales or crepitations, and symptomatology indicative of his arteriosclerotic heart disease. See *Trumbo, supra*; *Clark, supra*; Decision and Order on Third Remand at 13. Thus, as the administrative law judge permissibly found Dr. Castle's opinion entitled to dispositive weight, and claimant has not otherwise challenged

the administrative law judge's analysis, findings of fact, or conclusions of law, we affirm the administrative law judge's determination that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis.

Because the administrative law judge properly found that claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement in this Part 718 case, we affirm the administrative law judge's finding that claimant is not entitled to benefits. *See Trent, supra; Perry, supra.*

Accordingly, the Decision and Order on Third Remand - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge