BRB No. 05-0421 BLA

JOHN H. BALL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL CORPORATION	)	
	)	
	)	DATE ISSUED: 10/18/2005
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.

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: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (03-BLA-5264) of Administrative Law Judge Richard T. Stansell-Gamm (the administrative law judge) 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).[1] Claimant's prior

[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

application for benefits, filed on January 25, 1994, was finally denied on July 11, 1994 because claimant failed to establish either the existence of pneumoconiosis or a totally disabling respiratory impairment. Director's Exhibit 1. On February 9, 2001, claimant filed his current application, which is considered a "subsequent claim for benefits" because it was filed more than one year after the final denial of a previous claim. 20 C.F.R. §725.309(d); Director's Exhibit 4.

In a Decision and Order—Denial of Benefits issued on January 13, 2005, the administrative law judge credited claimant with at least thirty-seven years of coal mine employment,[2] as stipulated by the parties, and found that the medical evidence developed since the prior denial of benefits did not establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge therefore found that claimant did not demonstrate a change in an applicable condition of entitlement as required by 20 C.F.R. §725.309(d). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical opinion evidence relevant to the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), and relevant to the issue of total disability due to pneumoconiosis at 20 C.F.R. §718.204(b)(2)(iv), 718.204(c). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.[3]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence,

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effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2] The record indicates that claimant's coal mine employment occurred in West Virginia. Director's Exhibit 4. Accordingly, this 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, 1-202 (1989)(*en banc*).

[3] The administrative law judge's finding of at least thirty-seven years of coal mine employment and his findings that claimant did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3), and further failed to establish the existence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *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).

and 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because he failed to establish either the existence of pneumoconiosis or that he was totally disabled by a respiratory or pulmonary impairment. Director's Exhibit 1. Consequently, claimant had to submit new evidence establishing one of these two elements. 20 C.F.R. §725.309(d)(2), (3); *see also Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*)(holding under former provision that claimant must establish at least one element of entitlement previously adjudicated against him).

Claimant initially challenges the administrative law judge's evaluation of the medical opinion evidence on the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), specifically asserting that the administrative law judge erred in according less weight to the opinion of Dr. Mullins than to the contrary opinions of Drs. Zaldivar and Branscomb. We disagree.

In considering the medical opinion evidence, the administrative law judge properly found that Dr. Mullins diagnosed the existence of pneumoconiosis, while Drs. Zaldivar and Branscomb found that claimant did not have pneumoconiosis. Director's Exhibits 15, 26; Employer's Exhibits 1, 2, 4, 5; Decision and Order at 7-10. The administrative law judge properly acknowledged, but did not rely on, the fact that Dr. Mullins based her opinion on a positive x-ray which was contrary to the administrative law judge's own findings, *see Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997), and permissibly accorded little weight to her opinion as not well reasoned, because she failed to provide adequate explanation for her conclusions. Decision and Order at 10. By contrast, the administrative law judge permissibly found the opinions of Drs. Zaldivar and Branscomb to be much better

reasoned and documented than that of Dr. Mullins because they provided an in-depth analysis and rationale to support their consensus that claimant does not suffer from either clinical or legal pneumoconiosis, and their opinions are better supported by the preponderance of the negative x-ray results and the results of the pulmonary function and blood gas studies. *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Further, the determination of whether an opinion is reasoned and documented is within the province of the administrative law judge. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-175 (4th Cir. 2000).

The administrative law judge has exclusive power to make credibility determinations and resolve inconsistencies in the evidence, *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 1096, 17 BLR 2-123, 2-127 (4th Cir. 1993), and the Board will not substitute its inferences for those of the administrative law judge, *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999). As the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a) is supported by substantial evidence, it is hereby affirmed.

Claimant further contends that the administrative law judge erred in his evaluation of the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv), asserting that the administrative law judge erred in according less weight to the opinion of Dr. Mullins than to the contrary opinions of Drs. Zaldivar and Branscomb. Again, we disagree. In reviewing the medical opinion evidence pursuant to the issue of total disability, the administrative law judge properly found that the only medical opinion of record supportive of a finding of total disability is that of Dr. Mullins dated July 19, 2001. Decision and Order at 13. The administrative law judge permissibly found Dr. Mullins' opinion outweighed by the better reasoned and documented opinion of Dr. Zaldivar, as supported by the opinion of Dr. Branscomb, whose opinion, that claimant does not suffer from a totally disabling pulmonary or respiratory impairment, he found to be the best documented and most consistent with the credible, objective medical data, including the uniformly non-qualifying pulmonary function and blood gas studies. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993); Director's Exhibit 15, 26; Employer's Exhibits 1, 2, 4, 5; Decision and Order at 13. Based on the foregoing, we affirm the administrative law judge's finding that the medical opinion evidence fails to establish total disability at 20 C.F.R. §718.204(b)(2)(iv).

As we affirm the administrative law judge's finding that claimant did not establish the existence of a totally disabling pulmonary or respiratory impairment pursuant to Section 718.204(b), we need not address claimant's contention that the administrative law judge erred in failing to attribute claimant's pulmonary impairment to his coal mine

employment pursuant to 20 C.F.R. §718.204(c). Consequently, we affirm the administrative law judge's finding that claimant did not establish a change in an applicable condition of entitlement pursuant to Section 725.309(d).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge