BRB No. 99- 0322 BLA

ROBERT L. CAMPBELL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED:
	)	
MAG INCORPORATED	)	
	)	
Employer-Petitioner	)	
	)	
WEST VIRGINIA COAL-WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Carrier	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Stephen E. Crist (West Virginia Employment Programs Litigation Unit), Charleston, West Virginia, for employer.

Cathryn Celeste Helm (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (98-BLA-0372) of Administrative Law Judge Richard T. Stansell-Gamm awarding 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). Claimant filed this claim on October 29, 1996. After accepting the parties' stipulations, the administrative law judge found that claimant established total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). Accordingly, benefits were awarded. Employer appeals, challenging the administrative law judge's findings at Section 718.204(b). Neither claimant nor the Director, Office of Workers' Compensation Programs, has responded to 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 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 under 20 C.F.R. Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove any one of these elements precludes entitlement. *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*).

The parties stipulated that claimant established twenty-six years of coal mine employment, that employer is the responsible operator, that claimant suffers from pneumoconiosis arising out of coal mine employment, and that claimant has a totally disabling respiratory impairment. *See* 20 C.F.R. §§ 718.202(a), 718.203(b) and 718.204(c). The administrative law judge accepted these stipulations. Thus the only issue before this Board is whether claimant's total disability is due to pneumoconiosis at 20 C.F.R. §718.204(b). Claimant must establish that his pneumoconiosis is a contributing cause of his total disability. *See Robinson v. Pickands, Mather & Co.*, 914 F.2d 1144, 14 BLR 2-68 (4th Cir. 1990).

Employer's first contention, that a medical opinion that an obstructive defect with some reversibility can be related to coal dust exposure, is contrary to the holding of the United States Supreme Court in *Mullins Coal Co. Inc., of Virginia v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), is without merit. *Mullins,* in discussing x-ray evidence, states that pneumoconiosis is a progressive and irreversible disease but does not preclude the existence of other pulmonary or respiratory conditions caused or aggravated by coal dust exposure, which might show some reversibility, as legal pneumoconiosis at Section 718.201.

Mullins, supra, 484 U.S. 135, 151, 11 BLR 2-1, 2-9. The administrative law judge permissibly found that Dr. Rasmussen's opinion, that coal dust exposure can cause conditions which show some reversibility with use of a bronchodilator, was the opinion which was the best documented, and most probative, reasonable, and consistent with the objective medical evidence. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); Decision and Order at 10.

Employer next contends that the administrative law judge erred in discrediting the reports rendered by Drs. Daniel and Fino. Contrary to employer's contention, the administrative law judge did not discredit these reports but found that Drs. Fino and Daniel, and Rasmussen, provided "documented and reasoned evaluations of Mr. Campbell's current condition." Decision and Order at 10. In determining their relative probative value, the administrative law judge, within his discretion, accorded less evidentiary weight to the opinions of Drs. Fino and Daniel. *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

The administrative law judge found that Dr. Daniel's opinion was the least probative, as he did not address whether pneumoconiosis played any part in claimant's disability despite having diagnosed the disease. Decision and Order at 10. The administrative law judge found, "While the absence of any comment regarding disability due to pneumoconiosis implies the absence of such causation, that implication is insufficient to support a finding that pneumoconiosis did not contribute to the impairment." *Id.* As a result, the administrative law judge permissibly found this opinion ambiguous in regard to etiology of total disability. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145 (1984). Further, the administrative law judge determined, "due to his belief that pneumoconiosis generally does not cause an obstructive impairment, Dr. Daniel seems to have narrowed his analysis" to clinical rather than the broader statutory pneumoconiosis. *See* 20 C.F.R. §718.201; *Mullins, supra*; Decision and Order at 10-11.

The administrative law judge also gave less weight to Dr. Fino's opinion, although he found that Dr. Fino was the best qualified physician, because he did not examine claimant, and, more importantly, his analysis was too narrow, as he seemed to exclude the possibility that any obstructive lung impairment which shows some reversibility could be legal pneumoconiosis. *See* 20 C.F.R. §718.201; *Mullins, supra; see also Warth v. Southern Ohio Coal Co.*, 60 F. 3d 173 19 BLR 2-265 (4th Cir. 1995); Decision and Order at 11. Thus, the administrative law judge did not discredit Dr. Fino's report solely because he did not examine claimant. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203 (4th Cir. 2000); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438 (4th Cir. 1997).

The administrative law judge properly credited Dr. Rasmussen's opinion, finding that

he was in the best position to render a comprehensive medical assessment, because he examined claimant twice, twelve years apart, observed the progress of his disease, reviewed the entire medical record, including reports by Drs. Daniels and Fino and his thorough explanation of how an obstructive lung impairment which shows some reversibility could be related to coal dust exposure, was convincing. *See Campbell v. North American Coal Co.*, 6 BLR 1-244 (1983); Decision and Order at 11. Consequently, the administrative law judge permissibly found Dr. Rasmussen's opinion that coal dust exposure must be considered a major contributing factor in claimant's pulmonary impairment, Director's Exhibits 13, 15 , to be the best reasoned in the record, based on the entire medical, work and social history in the case, and accorded it determinative weight over the opinions of Drs. Daniels and Fino. *See Akers, supra.* The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that claimant established that his total disability was due to pneumoconiosis at Section 718.204(b). *See Robertson, supra*. We thus affirm the administrative law judge's award of benefits in the instant case. *See Trent, supra; Perry, supra.*

Accordingly, the Decision and Order - Award of Benefits of the administrative law judge is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge