U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0124 BLA

RONALD P. SCHELL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CENTRAL OHIO COAL	)	
	)	DATE ISSUED: 01/21/2016
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Timothy F. Cogan (Cassidy, Cogan, Shapell & Voegelin, L.C.), Wheeling, West Virginia, for claimant.

George E. Roeder, III (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2011-BLA-5592) of Administrative Law Judge Richard A. Morgan (the administrative law judge) rendered on a claim filed on February 3, 2009, pursuant to the provisions of the Black Lung Benefits

Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] The administrative law judge credited claimant with at least twenty-five years of qualifying coal mine employment, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Parts 718 and 725. The administrative law judge found that the evidence established the existence of clinical pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), but did not establish total respiratory disability pursuant to 20 C.F.R. §718.204(b). The administrative law judge therefore found that claimant is not entitled to invocation of the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence did not establish total respiratory disability at Section 718.204(b). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive brief in this appeal.[2]

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,

[1] Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, the amendments reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption of total disability due to pneumoconiosis in cases where fifteen or more years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment are established. 30 U.S.C. §921(c)(4).

[2] We affirm the administrative law judge's findings that claimant has at least twenty-five years of qualifying coal mine employment, that the evidence did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), but established the existence of clinical pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and that the evidence did not establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii) and (iii), as these determinations are unchallenged on appeal. *See Skrack v. Director, OWCP*, 6 BLR 1-710 (1983).

and in accordance with applicable law.[3] 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 filed pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that he is totally disabled, and that his total disability is caused by pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Claimant contends that the disability opinions of Drs. Rosenberg and Fino are not credible. Specifically, claimant asserts that the opinions of Drs. Rosenberg and Fino are hostile to the Act. Claimant also asserts that Drs. Rosenberg and Fino are biased against coal miners.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence, consistent with applicable law, and contains no reversible error. At Section 718.204(b)(2)(iv), the administrative law judge considered the opinions of Drs. Knight, Rosenberg and Fino,[4] and noted that "Dr. Knight was the only physician to find [claimant] suffered a total respiratory disability." Decision and Order at 23. The administrative law judge found that the opinions of Drs. Rosenberg and Fino outweighed Dr. Knight's contrary opinion, because they were better

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment was in Ohio. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Tr. at 24-25.

[4] Dr. Knight opined that claimant was totally disabled for his last coal mining job. Director's Exhibit 10; Claimant's Exhibit 3. By contrast, Dr. Rosenberg opined that claimant was not disabled from a pulmonary perspective from performing his previous coal mine job. Employer's Exhibits 1, 16. Similarly, Dr. Fino opined that claimant does not have any respiratory impairment, and that he could return to his last job. Employer's Exhibits 5, 17.

documented and reasoned.[5] In addition, the administrative law judge found that the qualifications of Drs. Rosenberg and Fino were superior to those of Dr. Knight.[6] The administrative law judge therefore found that claimant failed to establish total respiratory disability.[7] We reject claimant's assertion that the opinions of Drs. Rosenberg and Fino are hostile to the Act, since claimant has not identified with specificity any portion of the opinions of the physicians which were provided in this case which are hostile to the Act. *See Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988). Moreover, we reject claimant's assertion that Drs. Rosenberg and Fino are biased against him because there is no evidence in the record to support this assertion. *See generally Cochran v. Consolidation Coal Co.*, 12 BLR 1-136 (1989). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson*, 12 BLR at 1-113; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Claimant alleges no other specific error with regard to the administrative law judge's weighing of the medical opinions of record. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence did not establish total respiratory disability at 20 C.F.R. §718.204(b)(2)(iv).

In view of our affirmance of the administrative law judge's finding that the evidence did not establish total respiratory disability at 20 C.F.R. §718.204(b), an essential element of entitlement under 20 C.F.R. Part 718, *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(en banc), we affirm the administrative law judge's denial of benefits.

[5] After reviewing the documentation underlying the physicians' opinions and assessing, with specific explanations, the quality of their reasoning in light of the evidence, the administrative law judge found "[Dr. Knight's] opinions marginally adequate, but significantly poorer in reasoning than the opinions of the employer's physicians [Drs. Rosenberg and Fino], who unlike Dr. Knight, maintained [B]oard certification in pulmonary diseases." Decision and Order at 23.

[6] Dr. Knight is Board-certified in internal medicine, Employer's Exhibit 9, while Drs. Rosenberg and Fino are Board-certified in internal medicine and pulmonary diseases, Employer's Exhibits 3, 6.

[7] Claimant does not challenge the administrative law judge's weighing of Dr. Knight's opinion, which is the only medical opinion of record that could support a finding of total respiratory disability.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge