BRB No. 01-0866 BLA

MAHLON EARL LEFFLER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:_____
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Jennifer U. Toth (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order (01-BLA-0061) of Administrative Law

[1]Claimant is Mahlon Earl Leffler, the miner, who filed his second claim for benefits on September 27, 1994. Director's Exhibit 1. Administrative Law Judge Ainsworth H. Brown denied benefits on claimant's second claim because, after finding a material change in conditions established, Judge Brown found that claimant failed to establish that his total disability was due to pneumoconiosis. Director's Exhibit 89. On claimant's appeal, the Board affirmed Judge Brown's denial of benefits on the merits by affirming his finding that claimant failed to establish that his total disability was due to pneumoconiosis. Director's Exhibit 105. The Board, subsequently, summarily denied claimant's motion for reconsideration on August 31, 1999. Director's Exhibit 107. Thereafter, claimant timely

Judge Ralph A. Romano denying benefits on a miner's 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).[2] Initially, the administrative law judge noted the parties' stipulation to fifteen years of coal mine employment, the existence of pneumoconiosis arising out of coal mine employment, and total respiratory disability, 2001 Hearing Transcript at 8-9. Decision and Order at 2. Applying the regulations pursuant to 20 C.F.R. Part 718, the administrative law judge found the evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Decision and Order at 4-5.

On appeal, claimant contends that the administrative law judge erred in discrediting the opinion of Dr. Kraynak and crediting the opinions of Drs. Levinson and Green to find that claimant failed to establish total respiratory disability due to pneumoconiosis. Claimant's Brief at 2-4. The Director, Office of Workers' Compensation Programs (the Director), responds urging affirmance of the denial of benefits.

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe*

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requested modification, the district director denied this request, and claimant requested a hearing before the Office of Administrative Law Judges. Director's Exhibits 114, 115. Claimant's first claim for benefits, filed on August 1, 1983, was finally denied on November 15, 1983. Director's Exhibit 26.

[2]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.

v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

The administrative law judge considered the all of the evidence relevant to the issue of the cause of claimant's total respiratory disability. The administrative law judge noted that Dr. Green found claimant to be totally disabled due to his history of heart disease, that Dr. Levinson found claimant to be totally disabled due to his cigarette smoking, and that Dr. Kraynak, claimant's treating physician, opined that claimant was totally disabled due to pneumoconiosis. Decision and Order at 3-4. The administrative law judge accorded "little probative value" to Dr. Kraynak's opinion because he found it to be "unreliable" and "unreasoned." Decision and Order at 4, 5.

Claimant challenges the administrative law judge's discrediting of Dr. Kraynak's opinion. Claimant's Brief at 2. Claimant asserts that Dr. Kraynak's opinion should have been credited because this opinion is supported by the objective evidence of record[3] and because Dr. Kraynak is "the only physician of record who has performed multiple examinations of the Claimant." *Id.* In his discussion of Dr. Kraynak's deposition testimony, the administrative law judge noted that Dr. Kraynak treated claimant since 1995, seeing him about every two months. Decision and Order at 4. The administrative law judge stated that, even though Dr. Kraynak "has been the Claimant's treating physician since 1995," I find this physician's opinion to be unreliable for the following reasons. First, the administrative law judge noted that Dr. Kraynak testified that he monitors claimant's heart condition, that this condition is stable, that claimant has no complaints of chest pain, and that claimant does not use his prescribed nitroglycerin, but merely carries it as a prophylactic, Claimant's Exhibit 5 at 7-9, 11, 14. Decision and Order at 4. However, as the administrative law judge further noted, Dr. Kraynak's statements are undermined by claimant's testimony at the hearing that he uses his nitroglycerin whenever he has chest pain which is two or three times a week, 2001 Hearing Transcript at 14, and by Dr. Green's notation in his report that claimant experiences chest pain four days a week, Director's Exhibit 119. Decision and Order at 4. Second, the administrative law judge found that Dr. Kraynak, the only physician of record to find that claimant's disability is due to pneumoconiosis, does not explain the basis for his conclusions. Decision and Order at 4. Specifically, the administrative law judge found that

[3]Claimant specifically challenges the administrative law judge's determination that Dr. Kraynak's finding on the cause of disability is undocumented because, claimant asserts, the February 8, 2001 pulmonary function study this physician relied on produced qualifying results. We reject claimant's assertion. As the existence of a totally disabling respiratory impairment has already been established in this case, the February 8, 2001 pulmonary function study does not aid claimant in establishing the cause of claimant's disability that is at issue. *See Tucker v. Director, OWCP*, 10 BLR 1-35 (1987)(2-1 opinion with Levin, J., dissenting); *Piniansky v. Director, OWCP*, 7 BLR 1-171 (1984).

Dr. Kraynak does not adequately explain how claimant's rather significant smoking history of one-half to one pack of cigarettes per day for forty years did not contribute in any way to claimant's respiratory problems. *Id.* Based on the foregoing, the administrative law judge permissibly found that Dr. Kraynak's opinion linking claimant's disability to his pneumoconiosis was not reliable or reasoned. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Crosson v. Director, OWCP*, 6 BLR 1-809 (1984); *Duke v. Director, OWCP*, 6 BLR 1-673, 1-675 (1983).

Moreover, the administrative law judge, citing *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997), noted that the United States Court of Appeals for the Third Circuit has stated that a treating physician's opinion may be accorded greater weight than the opinions of other physicians, but that an administrative law judge may permissibly require the treating physician to provide more than a conclusory statement in rendering his findings. Decision and Order at 4-5. The administrative law judge found that Dr. Kraynak "has provided nothing more than conclusory statements in determining that the Miner is totally disabled due to pneumoconiosis." *Id.* at 5; *see* discussion, *supra*. Therefore, the administrative law judge found Dr. Kraynak's opinion to be "worthy of little probative value regarding total disability due to pneumoconiosis." *Id.* at 5. Because the administrative law judge has properly rejected the only medical opinion in the record which supports claimant's burden of establishing that his disability was due to pneumoconiosis, *see* discussion, *supra*; *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984), claimant's contentions regarding the adequacy of the opposing medical opinions are moot and we do not address the specific contentions.[4] *See Bibb v. Clinchfield Coal Co.*, 7 BLR 1-134 (1984); *see generally Creggar v. U.S. Steel Corp.*, 6 BLR 1-1219 (1984). Consequently, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish that claimant's total disability is due to pneumoconiosis pursuant to Section 718.204(c).[5] *See Bonessa v.*

[4]Claimant additionally challenges the credibility of the opinions of Drs. Green and Levinson. Claimant's Brief at 2-3.

[5]20 C.F.R. §718.104(d) of the new regulations applies to Dr. Kraynak's March 30, 2001 deposition testimony because this evidence was developed after January 19, 2001. 20 C.F.R. §718.101(b). We note that the administrative law judge did not explicitly refer to the factors an adjudicator must consider when weighing the opinion of a miner's treating physician, outlined in the new regulations at 20 C.F.R. §718.104(d), in his consideration of Dr. Kraynak's opinion. However, because the administrative law judge's characterization of Dr. Kraynak as the claimant's treating physician conforms to the requirements of Section 718.104(d), we deem the administrative law judge's failure to specifically address the criteria

U.S. Steel Corp., 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989).

Inasmuch as we affirm the administrative law judge's finding that claimant failed to establish his total disability is due to pneumoconiosis, *see* 20 C.F.R. §718.204(c), a requisite element of entitlement under Part 718, *see Trent, supra*; *Perry, supra*, we also affirm his denial of benefits.[6]

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.

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outlined in this regulation to be harmless error. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Furthermore, since the administrative law judge properly found Dr. Kraynak's opinion to be unpersuasive, his discounting of this opinion is in accord with 20 C.F.R. §718.104(d)(5). *See* 20 C.F.R. §718.104(d)(5)(the weight given to a treating physician's opinion shall also be based on the credibility of that physician's opinion).

[6]We will not discuss the propriety of the administrative law judge's findings pursuant to 20 C.F.R. §725.310(a) (2000) inasmuch as the administrative law judge considered all the relevant evidence to determine whether claimant is entitled to benefits on the merits of his case. *See Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992).

Administrative Appeals Judge