BRB No. 01-0906 BLA

FOREST GALLAHER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BELLAIRE CORPORATION	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:_____
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Thomas McK. Hazlett (Harper & Hazlett), St. Clairsville, Ohio, for claimant.

John C. Artz (Polito & Smock, P.C.), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order on Remand (99-BLA-0083) of Administrative Law Judge Daniel L. Leland 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] This claim is before the Board for the

[1]Claimant is Forest Gallaher, the miner, who filed his present claim for benefits on October 20, 1997. Director's Exhibit 1. The miner's first claim for benefits, filed on May 14, 1996, was finally denied on July 31, 1996. Director's Exhibit 21. Subsequently, claimant submitted a letter on October 6, 1997, which was treated as an untimely request for modification and denied on October 9, 1997. *Id.*

[2]The Department of Labor amended the regulations implementing the Federal Coal

second time. Initially, the administrative law judge credited the miner with sixteen years and four months of coal mine employment and found a material change in conditions established pursuant to 20 C.F.R. §725.309(d) (2000). Decision and Order at 3, 5. Applying the regulations at 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2000). Decision and Order at 6. Accordingly, benefits were denied.

Thereafter, claimant appealed to the Board. On appeal, the Board vacated the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) (2000) and remanded this case for the administrative law judge to reconsider Dr. Reddy's opinion pursuant to this subsection. *See Gallaher v. Bellaire Corp.*, BRB No. 00-0674 BLA (Apr. 24, 2001)(unpub.). Additionally, the Board affirmed, as unchallenged on appeal, the administrative law judge's findings regarding length of coal mine employment, a material change in conditions, and those made pursuant to 20 C.F.R. §718.202(a)(1)-(a)(3) (2000). *Id.*

On remand, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) (2000).[3] Decision and Order on Remand at 2. Accordingly, benefits were again denied.

In this appeal, claimant asserts that the administrative law judge erred in weighing the medical opinion evidence at Section 718.202(a)(4) (2000). Claimant's Brief at 3-6. Employer has responded, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in 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,

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Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3]It is unclear whether the administrative law judge applied the previous or revised Part 718 regulations in adjudicating this claim on remand.

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

Claimant asserts that the administrative law judge on remand irrationally discredited the 1997 opinion of Dr. Reddy finding the existence of pneumoconiosis. Claimant's Brief at 3-4. Dr. Reddy examined claimant on two occasions, July 19,1996 and December 12, 1997. In his 1996 opinion, Dr. Reddy diagnosed claimant with chronic obstructive pulmonary disease due to cigarette smoking. Director's Exhibit 21. However, in Dr. Reddy's 1997 opinion, he found that claimant has simple coal workers' pneumoconiosis and stated that he based his diagnosis of pneumoconiosis on claimant's coal mine employment history and on Dr. Noble's positive reading of the November 20, 1997 x-ray.[4] Director's Exhibit 6. When this case was previously on appeal before the Board, the Board held "that the administrative law judge erred in discounting Dr. Reddy's second opinion on the basis that the overwhelming weight of the x-ray interpretations of record is negative for pneumoconiosis." *Gallaher*, *slip op.* at 4. Moreover, the Board noted employer's contention that the administrative law judge could have permissibly discredited Dr. Reddy's 1997 opinion based on *Winters v. Director, OWCP*, 6 BLR 1-877 (1984), since the positive x-ray reading upon which this opinion was based was reread as negative by three physicians who are B-readers and Board-certified radiologists and by two physicians who are B-readers. *See Gallaher*, *slip op.* at 4. However, the Board further noted that "the administrative law judge did not clearly do so in his Decision and Order." *Id.* Accordingly, the Board vacated the administrative law judge's Section 718.202(a)(4) (2000) finding and remanded this case for the administrative law judge to reconsider Dr. Reddy's opinion.

On remand, the administrative law judge discounted Dr. Reddy's 1997 report because he found it to be "unreasoned and based on an inaccurate x-ray interpretation." Decision and Order on Remand at 2. The administrative law judge first noted the discrepancy between the coal mine employment histories recorded by Dr. Reddy in his first and second reports. In his 1997 report, Dr. Reddy noted that claimant had *eighteen* years of coal mine employment, *ending in 1983*. Director's Exhibit 6. In his 1996 report, Dr. Reddy noted that claimant had *seventeen* years of coal mine employment, *ending in 1973*. Director's Exhibit 21. The administrative law judge found that although Dr. Reddy cited claimant's coal mine employment history as a basis for his diagnosis of coal workers' pneumoconiosis in his second report, Dr. Reddy did not discuss how the discrepancy between the coal mine

[4]In rendering his 1997 opinion, Dr. Reddy also conducted a physical examination and administered pulmonary function and blood gas studies. Director's Exhibit 6.

employment histories noted in his first and second reports "affected his changed diagnosis, nor is it apparent that it did." Decision and Order on Remand at 2. The administrative law judge then stated that Dr. Reddy also relied on Dr. Noble's positive interpretation of the November 20, 1997 x-ray to find the existence of pneumoconiosis, but the administrative law judge observed that this x-ray had been reread as negative "by three other board certified radiologists/B readers: Dr. Sargent, Dr. Kattan, and Dr. Gardner, and by two B readers: Dr. Altmeyer and Dr. Fino." *Id.* Therefore, the administrative law judge found that Dr. Reddy's second opinion is also supported by "an x-ray reading which is inaccurate." *Id.* Because the administrative law judge properly found that Dr. Reddy's opinion was both unreasoned and unsupported by the evidence, we hold that the administrative law judge permissibly discounted Dr. Reddy's 1997 opinion. *See Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *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); *Winters*, *supra*.

Because the administrative law judge has properly rejected the only medical opinion in the record which supports claimant's burden of establishing the existence of 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.[5] *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 the existence of pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4).

Inasmuch as we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis, *see* 20 C.F.R. §718.202(a), a requisite element of entitlement under Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*), we also affirm his denial of benefits.

[5]Claimant additionally challenges the credibility of the opinions of Drs. Fino and Altmeyer. Claimant's Brief at 4-6.

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge