BRB No. 04-0614 BLA

CLARK NAPIER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY	)	
	)	
	)	DATE ISSUED: 03/16/2005
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 - Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-5858) of Administrative Law Judge Rudolf L. Jansen on a claim[1] 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). The administrative law judge initially credited the parties' stipulation that claimant worked in qualifying coal mine employment for twenty years. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge

[1] Claimant, Clark Napier, filed his application for benefits on August 27, 2001. Director's Exhibit 1.

found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), but failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in finding that claimant failed to establish total respiratory disability under Section 718.204(b)(2)(iv). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating his intention not 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, and are consistent with the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant argues that in rendering his finding that claimant was not totally disabled pursuant to Section 718.204(b)(2)(iv), the administrative law judge erred by rejecting the well reasoned and documented opinions of Drs. Baker and Simpao and by finding that claimant failed, therefore, to carry his burden of establishing total respiratory disability by a preponderance of the evidence. Citing *Meadows v. Westmoreland Coal Co.*, 6 BLR 1-773 (1984), claimant argues that a single medical opinion may be sufficient to invoke the presumption of total disability.

Claimant's reliance on *Meadows* is misplaced, however, because that case dealt with the application of the interim presumption of total disability due to pneumoconiosis set forth at 20 C.F.R. Part 727. The instant case arises under 20 C.F.R. Part 718 which requires that claimant affirmatively establish each element of entitlement. 20 C.F.R. §§718.2, 718.202, 718.203, 718.204; *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*); *see 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). The administrative law judge permissibly found that Dr. Baker's total disability assessment was entitled to little probative weight inasmuch as the only rationale underlying his opinion consisted of a recommendation that claimant not return to a dusty environment to preclude further exacerbation of his pneumoconiosis. Decision and Order at 12; Director's Exhibit 30. Inasmuch as a medical opinion of the inadvisability of returning to coal mine employment because of pneumoconiosis is insufficient to demonstrate total respiratory disability, we affirm the administrative law judge's rejection of Dr. Baker's opinion. *See Migliorini v. Director, OWCP*, 898 F.2d 1292, 1296-1297, 13 BLR 2-418, 2-425 (7th Cir. 1990), *cert. denied*,

498 U.S. 958 (1990); *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988); *Bentley v. Director, OWCP*, 7 BLR 1-612, 614 (1984); *New v. Director, OWCP*, 6 BLR 1-597 (1983); Decision and Order at 12. The administrative law judge, within a proper exercise of his discretion, found that the opinion of Dr. Simpao, the only physician of record who opined that claimant was totally disabled, was outweighed by the contrary opinions of Drs. Dahhan and Rosenberg that, from a respiratory standpoint, claimant is able to perform his usual coal mine work, because the latter physicians' opinions were well reasoned and documented by normal physical examination findings and normal pulmonary function studies and arterial blood gas studies. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983) (determination as to whether physician's report is sufficiently reasoned and documented is credibility matter for administrative law judge); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order at 13.

Claimant further contends that the administrative law judge erred by failing to consider the exertional requirements of claimant's usual coal mine work or to consider that claimant's disability, age, and limited education and work experience would preclude claimant from obtaining gainful employment outside of the coal mine industry. Because he assigned little probative weight to the opinions of Drs. Baker and Simpao that claimant suffers from a pulmonary impairment and credited the opinions of Drs. Dahhan and Rosenberg that claimant retained the physiological capacity to continue his previous coal mine employment, the administrative law judge properly concluded that the medical opinion evidence was insufficient to demonstrate that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to Section 718.204(b)(2)(iv). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Taylor*, 12 BLR at 1-87; *Gee*, 9 BLR at 1-4; Director's Exhibits 7, 30, 36; Employer's Exhibits 1, 8, 11. Contrary to claimant's assertion, therefore, consideration of the exertional requirements of his usual coal mine work and other factors affecting his ability to obtain gainful employment was "unnecessary" because the administrative law judge relied on the opinions of Drs. Dahhan and Rosenberg who opined that, from a respiratory standpoint, claimant retains the physiological capacity to perform his previous coal mine employment. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172, 21 BLR 2-34, 2-45-46 (4th Cir. 1997); Decision and Order at 13. Accordingly, we affirm the administrative law judge's determination that claimant failed to satisfy his burden of demonstrating total respiratory disability pursuant to Section 718.204(b)(2)(iv). *See White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-6-7 (2004). In addition, the administrative law judge found that all four pulmonary function studies were non-qualifying, that all four arterial blood gas studies were non-qualifying, that there was no evidence of cor pulmonale with right-sided congestive heart failure, and that the opinions of Drs. Dahhan and Rosenberg finding no totally disabling respiratory or pulmonary impairment were entitled to dispositive weight.

Decision and Order at 12. Accordingly, after weighing all the evidence relevant to Section 718.204(b)(2)(i)-(iv), the administrative law judge permissibly found that the evidence of record failed to affirmatively establish total respiratory disability. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (*en banc*). Because claimant has not otherwise challenged the administrative law judge's credibility determinations, we affirm the administrative law judge's determination that claimant failed to satisfy his burden of demonstrating total respiratory disability pursuant to Section 718.204(b)(2)(iv). *See Fields*, 10 BLR at 1-19; *Gee*, 9 BLR at 1-4.

Consequently, because the administrative law judge's determination that claimant failed to affirmatively establish total respiratory disability at Section 718.204(b), a requisite element of entitlement under Part 718, is rational, contains no reversible error, and is supported by substantial evidence, we affirm the administrative law judge's determination that claimant's entitlement to benefits is precluded. *See Fields*, 10 BLR at 1-19; *Shedlock*, 9 BLR at 1-236.

Accordingly, the Decision and Order – Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge