BRB No. 03-0606 BLA

| | | |
|---|---|---|
| DAVID L. MULLINS | ) | |
| | ) | |
| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| SUNNY RIDGE MINING COMPANY, INCORPORATED | ) | DATE ISSUED: 04/26/2004 |
| | ) | |
| 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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and W. Andrew Delph, Jr. (Wolfe Williams & Rutherford), Norton, Virginia, for claimant.

H. Brett Stonecipher (Ferreri & Fogle), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (02-BLA-5277) of Administrative Law Judge Joseph E. Kane 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).[1] Claimant filed his claim for benefits on March 2, 2001. Director's Exhibit 2. After crediting claimant with 19.98 years of coal mine employment, the administrative law judge considered the claim pursuant to the applicable regulations at 20 C.F.R. Part 718. The administrative law judge found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). The administrative law judge also found claimant entitled to the rebuttable presumption that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), and that the presumption was not rebutted. The administrative law judge then determined, however, that the evidence of record is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits. On appeal, claimant challenges the administrative law judge's findings under Section 718.204(b)(2)(ii) and (iv). Employer responds in support of the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not presently intend to participate 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, and in accordance with applicable law. 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).

Claimant challenges the administrative law judge's finding that the arterial blood gas study evidence of record was insufficient to establish total disability under Section 718.204(b)(2)(ii). Claimant contends that the administrative law judge erred in discounting the qualifying blood gas study administered by Dr. Forehand on April 11, 2001 on the basis of Dr. Westerfield's opinion that the

---

[1]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 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2]We affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment finding as well as his determination that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.203(b). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3-7, 15-17.

study's validity was questionable. Dr. Westerfield opined that the exercise values obtained by Dr. Forehand in the April 11, 2001 blood gas study were invalid because claimant's PCO2 levels elevated upon exercise, which Dr. Westerfield indicated was contrary to what he would have anticipated – namely, that those numbers would have decreased upon exercise because individuals "blow off" carbon dioxide when exercising. Employer's Exhibit 2 at 12-13, 27-28. Dr. Westerfield indicated that he would "repeat" the study and "would not make clinical decisions on [claimant] based on this data." Employer's Exhibit 2 at 12. Characterizing as "incredible" Dr. Westerfield's opinion that these exercise values were invalid, claimant argues that, because Dr. Westerfield did not himself administer an exercise blood gas study in his pulmonary evaluation of claimant on August 9, 2001, Dr. Westerfield "[had] no way of knowing whether Dr. Forehand's exercise [arterial blood gas study] was an anomaly" or what results could have been expected. Petitioner's Brief at 8.

We find no merit in claimant's contention that the administrative law judge erred in discounting Dr. Forehand's April 11, 2001 qualifying blood gas study in light of Dr. Westerfield's invalidation of the exercise values and opinion that he would repeat the study and would not make clinical decisions based on it. Employer's Exhibit 2 at 12. A consulting physician's opinion regarding the validity of objective studies may constitute substantial evidence for their rejection, as long as the adjudicator provides a reason for preferring the opinion of the consulting physician over the administering doctor. *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). The administrative law judge properly credited as "reasonable" Dr. Westerfield's explanation as to why Dr. Forehand's blood gas study results were questionable. Decision and Order at 19; Employer's Exhibit 2. The interpretation of medical data is for the medical experts, *Marcum v. Director*, OWCP, 11 BLR 1-23 (1987), and whether a medical opinion is sufficiently reasoned is for the administrative law judge to decide. *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Furthermore, the administrative law judge found Dr. Westerfield's review of the study was entitled to probative weight in light of Dr. Westerfield's credentials as a pulmonary specialist.[3] *Peabody Coal Co. v. Odom*, 342 F.3d 486, 22 BLR 2-613 (6th Cir. 2003); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Kendrick v. Kentland-Elkhorn Coal Corp.*, 5 BLR 1-730 (1983); Decision and Order at 20;

[3]The record reflects that Dr. Westerfield is Board-certified in internal medicine and pulmonary medicine, while the record reflects that Dr. Forehand is a medical doctor and B reader. Director's Exhibit 11; Employer's Exhibit 2 (Deposition Exhibit 1).

Employer's Exhibit 2 (Deposition Exhibit 1). Additionally, the administrative law judge correctly found that the other arterial blood gas study of record – Dr. Westerfield's August 9, 2001 study – was non-qualifying. Decision and Order at 18; Director's Exhibit 13. We affirm, therefore, the administrative law judge's finding that the blood gas study evidence was insufficient to establish total disability pursuant to Section 718.204(b)(2)(ii).

Claimant also generally contends that the administrative law judge erred in crediting Dr. Westerfield's medical opinion, that claimant does not have any pulmonary impairment and is not totally disabled, Director's Exhibit 13; Employer's Exhibit 2, over Dr. Forehand's opinion to the contrary. We disagree. Dr. Forehand's opinion is the only opinion of record which, if credited, could support a finding of total disability under Section 718.204(b)(2)(iv). Director's Exhibit 11. The administrative law judge properly credited Dr. Westerfield's opinion over Dr. Forehand's opinion upon finding that Dr. Westerfield's opinion was better reasoned and documented than Dr. Forehand's report, *Clark*, 12 BLR at 1-155; Decision and Order at 20-21; Director's Exhibits 11, 13; Employer's Exhibit 2, and on the basis of Dr. Westerfield's superior credentials in pulmonary medicine. *Odom*, 342 F.3d at 493, 22 BLR at 2-623-624; *Dillon*, 11 BLR at 1-115; Decision and Order at 20; Employer's Exhibit 2 (Deposition Exhibit 1). We affirm, therefore, the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv). We also affirm, as unchallenged on appeal, the administrative law judge's determination that the evidence of record is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i) and (iii). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 18-19. Because claimant failed to establish total disability pursuant to Section 718.204(b)(2)(i)-(iv), a requisite element of entitlement under Part 718, the administrative law judge properly denied benefits. 20 C.F.R. §718.204(b)(2)(i)-(iv); *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*).

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

REGINA C. McGRANERY
Administrative Appeals Judge