BRB No. 06-0563 BLA

RICHARD O. ROUSE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KENERKO COMPANY	)	DATE ISSUED: 12/28/2006
	)	
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 - Denial of Benefits of Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

Richard O. Rouse, Benton, Illinois, *pro se*.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (04-BLA-5029) of Administrative Law Judge Stephen L. Purcell (the administrative law judge) on a subsequent 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] The administrative law judge concluded that the newly submitted evidence of record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2), and thereby was insufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725. 309(d). Accordingly, the administrative law judge denied the claim.

[1] Claimant filed his first claim for benefits, which was denied because claimant failed to establish any element of entitlement, on June 12, 2000. Claimant filed a subsequent claim for benefits, which is the subject of this appeal, on May 31, 2002. Director's Exhibit 3.

On appeal, claimant generally challenges the administrative law judge's Decision and Order. Neither employer nor the Director, Office of Workers' Compensation Programs, has responded to the instant appeal.

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

Considering the new x-ray interpretation evidence, the administrative law judge found that Dr. Whitehead, a Board-certified, B-reader, read the December 20, 2002 x-ray as positive for the existence of pneumoconiosis, 1/1, Director's Exhibit 10, but that this x-ray was read by Dr. Wiot, also a dually-qualified reader, as negative for the existence of pneumoconiosis. Employer's Exhibit 1. The administrative law judge found that a more recent x-ray, taken June 3, 2003, was interpreted as negative for the existence of pneumoconiosis by Dr. Powell, a B-reader. Employer's Exhibit 2. The administrative law judge concluded that the negative readings by Dr. Wiot, a dually qualified reader, and Dr. Powell, a B-reader, were entitled to at least as much weight as the sole positive x-ray reading by Dr. Whitehead, a dually qualified reader. Accordingly, the administrative law judge permissibly found that the weight of the x-ray evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Decision and Order at 6; *see* 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk and Western Railway Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 6. We affirm, therefore, the administrative law judge's finding that the newly submitted x-ray evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(1).

Further, the administrative law judge correctly found that because the record does not contain any biopsy or autopsy evidence, the existence of pneumoconiosis could not be established pursuant to Section 718.202(a)(2). Moreover, the administrative law judge correctly found that none of the presumptions contained in Section 718.202(a)(3) were available in this claim, so that the existence of pneumoconiosis could not be established thereunder. Decision and Order at 6; *see* 20 C.F.R. §§718.304, 718.305, 718.306.

Regarding Section 718.202(a)(4), the administrative law judge correctly found that while Dr. Houser opined that claimant had pneumoconiosis, Decision and Order at 5-6; Director's Exhibit 7, the administrative law judge permissibly found that Dr. Houser's opinion contained no rationale or explanation for his findings, and thus, the report was unreasoned and undocumented. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark*, 12 BLR at 1-155; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*), *aff'd sub nom. Director, OWCP v. Cargo Mining Co.*, Nos.88-3531, 88-3578 (6th Cir. May 11, 1989)(unpub.); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Cooper v. Director, OWCP*, 11 BLR 1-95 (1988)(Ramsey, CJ, concurring); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 6-7. We affirm, therefore, the administrative law judge's finding that the newly submitted medical opinion evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Next, the administrative law judge correctly found that the one newly submitted pulmonary function study and two newly submitted blood-gas studies yielded non-qualifying values. Director's Exhibits 8, 9; Employer's Exhibit 4; Decision and Order at 7. We affirm, therefore, the administrative law judge's findings that these newly submitted studies are insufficient to establish total respiratory disability pursuant to Section 718.204(b)(2)(i) and (ii). *See Clark*, 12 BLR 1-149; *Fields*, 10 BLR 1-19; *Winchester v. Director v. OWCP*, 9 BLR 1-177 (1986); *Tucker v Director v. OWCP*, 10 BLR 1-35 (1987). Further, the administrative law judge correctly found that the record contains no evidence of cor pulmonale with right-sided heart failure. We affirm, therefore, the administrative law judge's finding that the evidence fails to establish total respiratory disability pursuant to Section 718.204(b)(2)(iii). *See Newell v. Freeman United Coal Corp.*, 13 BLR 1-37 (1987).

Finally, the administrative law judge correctly noted that although Dr. Houser did not opine as to whether claimant's impairment was totally disabling, the doctor did note that claimant suffered from a "moderate impairment". Comparing the exertional requirements of claimant's last coal mine employment as a supervisor, the administrative law judge concluded that claimant's moderate impairment, as described by Dr. Houser, did not preclude claimant from performing his usual coal mine employment, especially in light of the fact that all of the objective studies were non-qualifying. This was permissible. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986). Consequently, we affirm the administrative law judge's finding that the newly submitted medical opinion evidence fails to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). We affirm, thereby, the administrative law judge's finding that the newly submitted evidence fails to establish a change in an applicable condition of entitlement that the prior denial was based upon, and thereby, we affirm the denial of the instant claim. *See* 20 C.F.R. §725.309(d).

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is

affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge