BRB No. 05-0572 BLA

CHARLES DANIELS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CRAVAT COAL COMPANY	)	DATE ISSUED: 01/26/2006
	)	
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 of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Charles Daniels, Powhatan Point, Ohio, *pro se*.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (02-BLA-5226) of Administrative Law Judge Gerald M. Tierney denying benefits 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

[1]Claimant filed his first claim on July 2, 1986. Director's Exhibit 1. This claim was denied by the Department of Labor (DOL) on December 8, 1986 because the

administrative law judge credited claimant with at least nineteen years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the newly submitted evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Consequently, the administrative law judge found the newly submitted evidence sufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Turning to the merits of the case, the administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). However, the administrative law judge found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer has not filed a brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to remand the case to the administrative law judge for further consideration of Dr. Reddy's disability causation opinion, based on errors made by the administrative law judge.[2]

In an appeal filed by a claimant 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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evidence did not show that claimant had pneumoconiosis, that the disease was caused at least in part by coal mine work, and that claimant was totally disabled by the disease. *Id*. The DOL administratively closed this claim on February 8, 1988. *Id*. Because claimant did not pursue this claim any further, the denial became final. Claimant filed his second claim on November 8, 1993. *Id*. On October 18, 1995, Administrative Law Judge Daniel L. Leland issued a Decision and Order denying benefits. *Id*. Judge Leland's denial was based on his finding that claimant failed to establish a material change in conditions. *Id*. The denial became final because claimant did not pursue this claim any further. Claimant filed his most recent claim on April 27, 2001. Director's Exhibit 2.

[2]Since the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §§725.309, 718.202(a) and 718.203(b), which are not adverse to this *pro se* claimant, are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In finding the medical opinion evidence insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), the administrative law judge considered Dr. Reddy's July 19, 2001 report. Dr. Reddy opined that "[claimant] has 5% pulmonary impairment (five percent) due to occupational pneumoconiosis." Director's Exhibit 8. The administrative law judge permissibly discredited Dr. Reddy's disability causation opinion because it is not reasoned. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge specifically stated that "Dr. Reddy's assessment of 5% pulmonary impairment due to pneumoconiosis is a *bald* assertion." Decision and Order at 4. In the disability causation section of the report, Dr. Reddy stated that his opinion that claimant has a 5% pulmonary impairment due to pneumoconiosis is based on the data in his report. Director's Exhibit 8. However, Dr. Reddy did not explain, nor is it apparent, how the data in his report support his disability causation opinion. Thus, since the administrative law judge reasonably found that Dr. Reddy's disability causation opinion is not reasoned, we are not persuaded by the Director's argument that it could be inferred that Dr. Reddy linked claimant's impairment to his coal mine dust exposure.[3] The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Stating that the most recent evidence is the most probative evidence, the administrative law judge discussed only Dr. Reddy's opinion with regard to the issue of total disability due to pneumoconiosis. Decision and Order at 3; *see generally Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 11 BLR 2-147 (6th Cir. 1988). The record, however, also contains the previously submitted reports of Drs. DelVecchio, Burke, and

[3]The administrative law judge also stated that "the assessment of 5% would arguably fall short of being a substantially contributing cause of [c]laimant's possibly totally disabling respiratory or pulmonary impairment." Decision and Order at 4. As argued by the Director, Office of Workers' Compensation Programs (the Director), however, "[i]t is not inherently clear that the 5% contribution found by Dr. Reddy does not meet this standard." Director's Motion to Remand at 4-5; *see* 20 C.F.R. §718.204(c)(1)(i) and (ii). Nonetheless, since the administrative law judge permissibly discredited Dr. Reddy's disability causation opinion because it is not reasoned, *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984), we hold that any error by the administrative law judge in applying the "substantially contributing cause" standard at 20 C.F.R. §718.204(c) with respect to Dr. Reddy's opinion is harmless, *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Blatt,[4] which the administrative law judge did not specifically address on the merits at 20 C.F.R. §718.204(c). An administrative law judge must address and discuss all relevant evidence of record. *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-966, 1-988 (1984). Nevertheless, we hold that any error by the administrative law judge in failing to specifically consider all of the medical reports of record is harmless, *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), since he permissibly discredited Dr. Reddy's opinion, the only medical opinion of record that could support a finding of total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-21-22; *Fuller*, 6 BLR at 1-1294. Thus, since it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c).[5]

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *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*). Consequently, we need not address the administrative law judge's consideration of the evidence at 20 C.F.R. §718.204(b). *Larioni*, 6 BLR at 1-1278.

[4]Dr. DelVecchio, in a report dated January 12, 1994, opined that claimant has no pneumoconiosis, zero percent respiratory or pulmonary disability, and zero percent contribution to a respiratory or pulmonary impairment from a diagnosed condition. Director's Exhibit 1. In a report dated August 12, 1986, Dr. Burke did not render an opinion regarding the issue of total disability due to pneumoconiosis. *Id*. Similarly, in a report dated November 29, 1989, Dr. Blatt did not render an opinion regarding the issue of total disability due to pneumoconiosis. *Id*.

[5]In view of our affirmance of the administrative law judge's weighing of Dr. Reddy's opinion at 20 C.F.R. §718.204(c), we need not address the Director's argument that, given that the pulmonary function study administered by Dr. Reddy was qualifying, and thus indicative of total disability, Dr. Reddy's failure to address the issue of total disability in his report does not render his disability causation opinion suspect.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge