BRB No. 04-0116 BLA

CLIFFORD LEWIS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED: 07/01/2004
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (2002-BLA-5427) of Administrative Law Judge Joseph E. Kane rendered on a duplicate 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 found twenty-

[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.

three years of coal mine employment established and adjudicated the claim pursuant to 20 C.F.R. Part 718 based on the date of filing. Decision and Order at 3. In considering the duplicate claim, the administrative law judge concluded that the evidence was insufficient to establish the existence of pneumoconiosis or a totally disabling respiratory impairment arising out of coal mine employment, elements of entitlement previously adjudicated against claimant. The administrative law judge, therefore, found that a material change in conditions was not established pursuant to *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). Accordingly, benefits were denied.[2]

On appeal, claimant generally contends that the evidence is sufficient to establish the existence of pneumoconiosis and a totally disabling respiratory impairment arising out of coal mine employment. The Director, Office of Workers' Compensation Programs, (the Director) responds, urging affirmance of the denial of benefits.

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 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. In resolving the conflict in the x-ray readings of the August 20, 2002 x-ray, read by Drs. Barrett and Baker, the administrative law judge accorded greater weight to the negative reading by Dr. Barrett as he was both a B-reader and a

[2] Claimant filed his first claim for benefits on November 14, 1993. That claim was denied because claimant failed to establish any element of entitlement. The claim was subsequently deemed abandoned when claimant failed to attend an informal conference and failed to respond to the administrative law judge's Show Cause Order on August 24, 1994. Director's Exhibits 1, 3. Claimant filed this duplicate claim on February 7, 2001. Director's Exhibit 3.

Board-certified radiologist, while Dr. Baker was only a B-reader.[3] This was rational. 20 C.F.R. §718.202(a)(1); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1 (1999)(*en banc recon.*); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). Thus, contrary to claimant's contention, the administrative law judge rationally found that the x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1) and that finding is, therefore, affirmed. 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk & Western Ry. 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).

Considering the medical opinion evidence of record, the administrative law judge properly accorded little weight to the opinion of Dr. Baker, the only physician who diagnosed the existence of pneumoconiosis, as his diagnosis of pneumoconiosis was based solely on a positive x-ray reading and a significant history of coal dust exposure. The administrative law judge explained that Dr. Baker, a B-reader, failed to explain his reasoning for discounting claimant's non-qualifying pulmonary function and blood gas studies and that he was not as well qualified as the board-certified radiologists who found claimant's x-rays to be negative. Further, the administrative law judge found that Dr. Baker did not explain why claimant's respiratory impairment was due to coal mine employment rather than smoking.[4] Thus, contrary to claimant's contention, the administrative law judge reasonably rejected Dr. Baker's finding of pneumoconiosis as unreasoned. *See Cornett v. Benham Coal Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983)(explaining that in making credibility determinations, the ALJ must "examine the validity of the reasoning of a medical opinion in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based")(footnote omitted); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998)(administrative law judge has discretion to disregard opinion unsupported by sufficient rationale); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997)("In weighing opinions, the administrative law judge is called upon to consider their quality," taking into account, among other things, "the opinions' reasoning" and "detail of analysis."); *Risher v. Director, OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991)(a fact-finder "may disregard a medical opinion that does not adequately explain the basis for its

[3] The other x-ray of record dated April 20, 2001, was read negative for pneumoconiosis by Dr. Dahhan, a B-reader, and read for quality only by Dr. Sargent, a Board certified, B-reader. Director's Exhibit 10.

[4] Dr. Barrett, a board-certified B-reader interpreted the same x-ray read by Dr. Baker, negative for pneumoconiosis. Claimant's Exhibit 1; Director's Exhibit 18.

conclusion"); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Winters v. Director, OWCP*, 6 BLR 1-877 (1984). We therefore affirm the administrative law judge's finding that the new evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a).

Likewise, we affirm the administrative law judge's finding that the new evidence fails to establish total disability. Contrary to claimant's argument, the administrative law judge permissibly accorded little weight to the opinion of Dr. Baker because he found it unreasoned and unsubstantiated. This was proper. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). The administrative law judge, therefore, properly found that claimant failed to establish a totally disabling respiratory impairment. *See Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986) *aff'd on recon*. 9 BLR 1-236 (1987).

The administrative law judge is empowered to weigh the medical evidence of record and draw his own inference therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal if the administrative law judges findings are supported by substantial evidence, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). In this case, claimant is doing no more than requesting that we reweigh the evidence, which we cannot do. *Anderson*, 12 BLR at 1-113. As the administrative law judge properly found that claimant failed to establish either the existence of pneumoconiosis or total disability, elements previously adjudicated against him, he properly found that claimant failed to establish entitlement on this duplicate claim. *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994).

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

BETTY JEAN HALL
Administrative Appeals Judge