BRB No. 97-1740 BLA

FONSO HATFIELD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KENTLAND ELKHORN COAL CORPORATION	)	DATE ISSUED:
	)	
	)	
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 J. Michael O'Neill, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Lois A. Kitts (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-1055) of Administrative Law Judge J. Michael O'Neill denying benefits 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). The administrative law judge credited claimant with thirty-seven years and one month 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 evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total

disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge found the evidence insufficient to establish either a mistake in a determination of fact or a change in conditions pursuant to 20 C.F.R. §725.310,[1] and thus, he denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of

[1]Claimant filed his initial claim on September 25, 1985. Director's Exhibit 28. This claim was denied by the Department of Labor (DOL) on January 9, 1986 and March 13, 1987. *Id*. Inasmuch as claimant did not pursue this claim any further, the denial became final. Claimant filed a second claim on September 12, 1988. *Id*. On July 2, 1992, Administrative Law Judge Daniel L. Stewart issued a Decision and Order denying benefits. *Id*. The bases of Judge Stewart's denial were claimant's failure to establish both the existence of pneumoconiosis arising out of coal mine employment and total disability. *Id*. The Board affirmed Judge Stewart's denial. *Hatfield v. Kentland-Elkhorn Coal Corp.*, BRB No. 92-2160 BLA (Feb. 24, 1994)(unpub.). On April 26, 1994, claimant filed a third claim, which the DOL returned to claimant and informed him that he should contact the DOL after February 24, 1995 if he still desired to file a new claim. Director's Exhibit 28. Although claimant filed a forth claim on March 9, 1995, Administrative Law Judge J. Michael O'Neill treated claimant's April 26, 1994 claim as a request for modification. Director's Exhibit 1.

pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant further contends that the administrative law judge erred in finding the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[2]

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).

[2]Inasmuch as the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §§718.202(a)(2), (a)(3) and 718.204(c)(1)-(3), are not challenged on appeal, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Initially, claimant generally challenges the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). However, claimant does not delineate how the administrative law judge erred in his analysis of the newly submitted evidence at 20 C.F.R. §718.202(a)(1). Claimant merely notes the presence of positive x-ray interpretations that indicate that he suffers from pneumoconiosis. Thus, claimant has failed to allege any specific error in the administrative law judge's findings or legal conclusions, and as such, claimant fails to provide a basis upon which the Board may review the administrative law judge's findings.[3] *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Therefore, we affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

[3]The administrative law judge's finding on the merits that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) is furthermore supported by substantial evidence.

Next, claimant contends that the administrative law judge erred in finding the newly submitted evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). We disagree. Whereas Drs. Baker, Fritzhand, Gomez, Sundaram and Younes opined that claimant suffers from pneumoconiosis,[4] Director's Exhibits 6, 26, 28; Claimant's Exhibits 1, 2, Drs. Broudy and Vuskovich opined that claimant does not suffer from pneumoconiosis, Employer's Exhibits 1, 8, 9. The administrative law judge properly accorded greater weight to the opinions of Drs. Broudy and Vuskovich than to the contrary opinions of Drs. Baker, Fritzhand, Gomez, Sundaram and Younes because he permissibly found them to be better reasoned and documented.[5] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149

[4]Dr. Gomez opined that claimant suffers from a lung impairment due to coal dust exposure. Director's Exhibit 26. Dr. Younes opined that claimant suffers from chronic bronchitis probably caused by occupational dust exposure. Director's Exhibit 6.

[5]The administrative law judge stated that Dr. Broudy "offered a reasoned and well-explained opinion supported by physical findings and objective testing." Decision and Order at 17. Further, the administrative law judge stated that Dr. Vuskovich's opinion is "well explained and supported by the weight of [the] objective evidence." *Id*. In contrast, the administrative law judge stated that "Dr. Baker gave no reasons for his diagnosis of pneumoconiosis other than a positive x-ray interpretation and dust exposure." *Id*. at 13. Similarly, the administrative law judge stated that "Dr. Gomez gave no reasons to support such a diagnosis [of pneumoconiosis] nor did he cite any objective support for the diagnosis." *Id*. In addition, the administrative law judge observed that "Dr. Fritzhand bases his diagnosis of pneumoconiosis on a series of x-rays that are neither identified nor substantiated." *Id*. at 14. The administrative law judge stated that "[w]ithout more explanation and specificity, [he] cannot rely on Dr. Fritzhand's diagnosis." *Id*. Moreover, the administrative law judge stated that "Dr. Younes's opinion is somewhat confusing because he diagnosed chronic bronchitis and coronary artery disease as cardiopulmonary conditions and then stated that a probable cause of the diagnosed cardiopulmonary conditions was dust exposure." *Id*. at 15. The administrative law judge stated that "[p]erhaps Dr. Younes did not mean to insinuate this, but his opinion is unclear." *Id*. The administrative law judge also stated that Dr. Younes "did not attribute any diagnosis, even in part, to [claimant's smoking] history or explain why smoking did not affect the claimant." *Id*. Lastly, the administrative law judge stated that "Dr. Sundaram recorded varying smoking and occupational histories on his reports." *Id*. at 16. The administrative law judge stated that "[t]his variation calls into question the accuracy of the remainder of his reports and the care which he took in preparing the reports." *Id*.

(1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Claimant argues that the administrative law judge should have accorded determinative weight to Dr. Gomez's opinion because he is a treating physician. While an administrative law judge may accord greater weight to the medical opinion of a treating physician, *see Onderko v. Director, OWCP*, 14 BLR 1-2 (1989), he is not required to do so, *see Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Burns v. Director, OWCP*, 7 BLR 1-597 (1984). Therefore, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

In addition, claimant contends that the administrative law judge erred in finding the newly submitted evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). We disagree. Whereas Drs. Baker, Fritzhand and Sundaram opined that claimant suffers from a disabling respiratory impairment, Director's Exhibits 26, 28; Claimant's Exhibits 1, 2, Drs. Broudy, Vuskovich and Younes opined that claimant does not suffer from a disabling respiratory impairment, Director's Exhibit 6; Employer's Exhibits 1, 8, 9. The administrative law judge stated that "Dr. Gomez made no specific mention of whether the claimant suffered from a respiratory or pulmonary impairment."[6] Decision and Order at 20; Director's Exhibit 26. The administrative law judge properly accorded greater weight to the opinions of Drs. Broudy, Vuskovich and Younes than to the contrary opinions of Drs. Baker, Fritzhand and Sundaram because he permissibly found them to be better reasoned and documented.[7] *See Clark, supra*; *Fields, supra*; *Lucostic, supra*; *Fuller, supra*.

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[6]Although Dr. Gomez opined that claimant "is disabled for any type of arduous labor," Dr. Gomez did not specifically indicate that claimant's disability is from a pulmonary or respiratory impairment. Director's Exhibit 26; *see Beatty v. Danri Corp. and Triangle Enterprises*, 16 BLR 1-11 (1991). Further, Dr. Gomez's opinion that claimant should no longer be exposed to the dusty environment of the coal mining industry merely advises claimant to avoid further coal dust exposure. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); Director's Exhibit 26.

[7]The administrative law judge stated that "[n]ot only did [Dr. Broudy] assess the claimant's current condition, but he was able to compare the claimant's current pulmonary ability to his ability at previous examinations." Decision and Order at 22. In addition, the administrative law judge found Dr. Vuskovich's "report thorough, well reasoned, and supported by objective medical evidence." *Id*. Further, the administrative law judge found Dr. Younes's "opinion on disability supported by

Claimant asserts that the administrative law judge failed to consider Dr. Sundaram's opinion that claimant is totally disabled from a pulmonary standpoint to do his usual coal mine employment. Contrary to claimant's assertion, the administrative law judge observed that Dr. Sundaram stated that "claimant is not physically able, from a pulmonary standpoint, to do his usual coal mine work due to shortness of breath with limited activity." Decision and Order at 21. Thus, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(4).

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objective medical evidence and clinical findings." *Id*. However, the administrative law judge stated that he found "Dr. Baker's opinion poorly reasoned because he found the claimant totally disabled in spite of nonqualifying objective testing and did not explain his rationale for doing so." Id. at 20. Moreover, the administrative law judge stated that Dr. Baker did not "explain why a mild impairment would be totally disabling for this particular individual." *Id*. The administrative law judge also stated that "Dr. Fritzhand failed to explain why he found the claimant totally disabled in spite of results that failed to show total disability under the regulations." Id. at 21. Lastly, the administrative law judge stated that Dr. Sundaram "gave no reasoning or basis for [his] conclusion." *Id*. The administrative law judge observed that "Dr. Sundaram failed to explain why the claimant would be unable to perform coal mine employment when his pulmonary function values exceeded disability standards." *Id*. The administrative law judge also observed that "there is no indication that Dr. Sundaram considered the specific requirements of the claimant's last coal mining job when making this determination." *Id*.

In light of the foregoing, substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish a change in conditions at 20 C.F.R. §725.310.

Finally, we affirm the administrative law judge's finding, based on a review of "the entire evidentiary record," that the evidence is insufficient to establish a mistake in a determination of fact at 20 C.F.R. §725.310 as it is supported by substantial evidence. Decision and Order at 7; *see Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge