BRB No. 00-0267 BLA

LAWRENCE B. COPLEY)
)
Claimant-Petitioner)
)
v.)
)
ARCH OF WEST VIRGINIA/) DATE ISSUED:
APOGEE COAL COMPANY)
)
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 on Remand of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Lawrence B. Copley, Accoville, West Virginia, *pro se*.

Mary Rich Maloy (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand (97-BLA-1389) of Administrative Law Judge Paul H. Teitler denying benefits on a duplicate claim filed pursuant to the provisions of Title IV of

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[1]Claimant's first claim was filed on April 3, 1989. Director's Exhibit 30. However, the Department of Labor (DOL) approved claimant's withdrawal of this claim on November 29, 1990. *Id.* Claimant filed a second claim on September 2, 1993. Director's Exhibit 29. This claim was denied by the DOL on February 24, 1994. *Id.* Because claimant did not pursue this claim any further, the denial became

the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). This case is before the Board for the second time. In the original Decision and Order, the administrative law judge, based on the parties' stipulation, credited claimant with thirty-four years of coal mine employment and adjudicated this duplicate 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)-(3). Further, although the administrative law judge did not address whether the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), he found that the presumption that pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b) was not rebutted. In addition, the administrative law judge found the evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(2) and (c)(4). The administrative law judge also found the evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. In response to claimant's appeal and employer's cross-appeal, the Board affirmed the administrative law judge's findings at 20 C.F.R. §§718.202(a)(1)-(3) and 718.204(c)(1)-(3). However, the Board remanded the case to the administrative law judge to determine whether the evidence is sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Further, the Board vacated the administrative law judge's findings at 20 C.F.R. §§718.203(b), 718.204(c)(4) and 718.204(b), and remanded the case for further consideration of the evidence, if reached. *Copley v. Arch of West Virginia*, BRB Nos. 98-1177 BLA and 98-1177 BLA-A (May 26, 1999)(unpub.).

On remand, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Accordingly, the administrative law judge again denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits.

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final. On March 13, 1995, claimant filed a third claim, which the DOL denied on August 3, 1995. Director's Exhibit 28. The denial became final because claimant did not pursue this claim any further. Claimant's most recent claim was filed on August 20, 1996. Director's Exhibit 1. The administrative law judge stated, "[s]ince this claim is being considered *de novo*, there is no need to apply Section 725.309." [1998] Decision and Order at 3 n.2.

[2]The Board additionally instructed the administrative law judge to render a finding under 20 C.F.R. §718.204(c) in accordance with *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). *Copley v. Arch of West Virginia*, BRB Nos. 98-1177 BLA and 98-1177 BLA-A, slip op. at 8 (May 26, 1999)(unpub.).

Employer responds, urging affirmance of the administrative law judge's Decision and Order on Remand. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

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. *See 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).

In finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), the administrative law judge considered the opinions of Drs. Castle, Crisalli, Fino, Jarboe, Ranavaya, and the West Virginia Occupational Pneumoconiosis Board (WVOPB). Whereas Dr. Ranavaya and the WVOPB opined that claimant suffers from pneumoconiosis, Director's Exhibits 3, 12, 28, 29, 30, Drs. Castle, Crisalli, Fino and Jarboe opined that claimant does not suffer from pneumoconiosis, Employer's Exhibits 3, 6, 8, 10. The administrative law judge properly accorded greater weight to the opinions of Drs. Castle, Crisalli and Jarboe than to the contrary opinions of Dr. Ranavaya and the WVOPB because he found them to be better reasoned and documented. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en*

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[3]The administrative law judge observed that the West Virginia Occupational Pneumoconiosis Board "opined that [c]laimant had pneumoconiosis based on his x-rays, pulmonary function test, physical examination, and coal mine employment history." [1999] Decision and Order on Remand at 3.

[4]The administrative law judge stated that "the reports of [Drs. Castle and Jarboe] reflect that they have fully reviewed all of the available medical records and objective testing, and the reports corroborate each other." [1999] Decision and Order on Remand at 3. The administrative law judge also stated that "both physicians provide the rationales for their conclusions." *Id.* In addition, the administrative law judge stated that Dr. Crisalli's "report offers the rationale for his conclusions, and his conclusions are corroborated by the reports of Drs. Jarboe and Castle." *Id.* at 4. In contrast, the administrative law judge stated that Dr. Ranavaya's "reports do not reflect that he has reviewed all of the available medical records and objective testing." *Id.* Moreover, the administrative law judge stated that "Dr. Ranavaya's reports do not provide the rationale for his conclusions." *Id.* Lastly, the administrative law judge stated that the opinion of the West Virginia Occupational

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). Additionally, the administrative law judge properly accorded greater weight to the opinions of Drs. Castle, Crisalli and Jarboe because of their superior qualifications. *See Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Although the administrative law judge observed that "Dr. Fino opined that there was insufficient evidence to establish the existence of pneumoconiosis," [1999] Decision and Order on Remand at 3, he did not provide any explanation for his rejection of Dr. Fino's opinion. An administrative law judge must not reject relevant evidence without an explanation. *See Tanner v. Freeman United Coal Co.*, 10 BLR 1-85 (1987); *McGinnis v. Freeman United Coal Mining Co.*, 10 BLR 1-4 (1987); *Shaneyfelt v. Jones & Laughlin Steel Corp.*, 4 BLR 1-144 (1981). Nonetheless, since Dr. Fino opined that claimant does not suffer from pneumoconiosis, Employer's Exhibit 8, we hold that any error by the administrative law judge in this regard is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Thus, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, we hold that the administrative law judge properly denied benefits under 20 C.F.R. Part 718. *See*

Pneumoconiosis Board "was rendered without the benefit of review of the more recent x-ray and CT scan evidence of record." *Id.*

[5]The administrative law judge stated that Drs. Castle and Jarboe "are highly qualified as they are Board Certified in both Internal Medicine and Pulmonary Disease." [1999] Decision and Order on Remand at 3. Similarly, the administrative law judge stated that Dr. Crisalli "is Board Certified in Internal Medicine and Pulmonary Disease." *Id.* at 4. The administrative law judge also stated that "Dr. Ranavaya's credentials are not of record." *Id.* Further, with regard to the West Virginia Occupational Pneumoconiosis Board, the administrative law judge stated that "the credentials of the physicians are not of record." *Id.*

[6]The administrative law judge stated, "[a]t best, the physician opinion evidence regarding the existence of pneumoconiosis is in equipoise." [1999] Decision and Order on Remand at 4. In *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993), the United States Supreme Court held that when evidence is equally balanced, claimant must lose.

Trent v. Director, OWCP, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge