BRB No. 00-0286 BLA

HAROLD D. SHAW	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Harold D. Shaw (Mount Crawford, Virginia), *pro se*.

Helen H. Cox (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order-Denying Benefits (1999-BLA-853) of Administrative Law Judge John C. Holmes 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 procedural history of this claim is as follows. Claimant's application for benefits filed on August 24, 1990, Director's Exhibit 40-1, was denied by the claims examiner on January 15, 1991, Director's Exhibit 40-14, and his subsequent application for benefits filed on March 10, 1995, Director's Exhibit 41-1, was denied by the claims examiners on August 31, 1995, Director's Exhibit 41-20.

On March 21, 1997, claimant filed another claim for benefits. Director's Exhibit 1. The claims examiner denied benefits on August 27, 1997, Director's Exhibit 17, and on October 21, 1997, claimant requested a formal hearing, Director's Exhibit 18. A conference

officer issued a denial on February 5, 1998. Director's Exhibit 19. In an undated letter, claimant requested that his claim be "kept open." Director's Exhibit 20. In a letter to claimant dated April 28, 1998, the claims examiner informed claimant that his undated letter, received on April 14, 1998, constituted a request for modification of his previous denial. Director's Exhibit 21. On July 9, 1998, the claims examiner denied claimant's request for modification. Director's Exhibit 22.

On February 9, 1999, claimant requested a formal hearing, Director's Exhibit 35, and the claims examiner indicated this letter constituted a request for modification, Director's Exhibit 36. On March 12, 1999, the district director denied claimant's request for modification. Director's Exhibit 38. On March 18, 1999, claimant requested a hearing, Director's Exhibit 39, and on April 28, 1999, the case was transferred to the Office of Administrative Law Judges, Director's Exhibit 42.

After holding a hearing, the administrative law judge issued a Decision and Order - Denying Benefits on October 27, 1999. The administrative law judge credited claimant with twelve years of coal mine employment and adjudicated this case pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge noted the concession of the Director, Office of Workers' Compensation Programs (the Director), to the existence of pneumoconiosis arising out of coal mine employment, which he accepted. The administrative law judge reviewed all of the medical evidence and found that it did not establish the existence of total disability pursuant to 20 C.F.R. §718.204(c), or that pneumoconiosis contributed to any impairment pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

In claimant's letter in support of his appeal, claimant asserts that he has established an interim presumption based on his thirteen years of coal mine employment, and suggests that a change in conditions has occurred, and that he is totally disabled due to pneumoconiosis. The Director responds, by letter, stating that the administrative law judge found a material change in conditions based on the Director's concession of the existence of pneumoconiosis arising out of coal mine employment. The Director asserts that the administrative law judge properly found the evidence insufficient to establish total disability pursuant to Section 718.204(c), and, therefore, properly denied benefits.

In an appeal by a claimant filed without the assistance of counsel, the Board will

[1] In an August 11, 1998 letter, claimant requested that his claim be kept open, and in an August 31, 1998 response to claimant, the claims examiner indicated that claimant's letter "is acceptable to note a timely request for reconsideration...." Director's Exhibit 24. In a letter to claimant dated October 8, 1998, the claims examiner indicated that claimant's August 11, 1998 letter would be treated as a request for modification. Director's Exhibit 26. On December 29, 1998, benefits were denied by the claims examiner. Director's Exhibit 32.

consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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).

Initially, we address the administrative law judge's findings pursuant to Section 718.204(c). The administrative law judge found the pulmonary function study and blood gas study evidence insufficient to establish total disability. Inasmuch as the record contains the results of three pulmonary function studies, Director's Exhibits 9, 40-5, 41-9, and four blood gas studies, Director's Exhibits 9, 12, 13, 40-9, 41-12; Claimant's Exhibit 1, all of which yielded non-qualifying results, we affirm the administrative law judge's finding that the evidence is insufficient to demonstrate total disability pursuant to Section 718.204(c)(1) and (c)(2). Further, since the record does not contain any evidence of cor pulmonale with right sided congestive heart failure, we hold that total disability is not demonstrated pursuant to Section 718.204(c)(3).

In finding the medical opinion evidence insufficient to demonstrate total disability at Section 718.204(c)(4), the administrative law judge relied upon the opinions of Drs. Arora, Smith and Leslie, finding them supported by the objective medical evidence of record, and determined that the opinion of Dr. Gianopoulos is undocumented and unreasoned. The

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[2] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying"study exceeds those values. *See* 20 C.F.R. §718.204(c)(1)-(2).

[3] Dr. Arora examined claimant in 1990. Dr. Arora noted that claimant's pulmonary function test pattern was consistent with a mild obstructive airway disease due to chronic bronchitis, and stated that he detected no impairment. Director's Exhibit 40-8. Dr. Smith examined claimant in 1995 and diagnosed chronic obstructive pulmonary disease due to cigarette abuse. Dr. Smith opined that claimant's impairment from chronic obstructive pulmonary disease is mild and that claimant's impairment is totally due to chronic obstructive pulmonary disease. Director's Exhibit 41-10. Dr. Leslie examined claimant in 1997 and diagnosed a mild to moderate chronic obstructive pulmonary disease due to tobacco abuse. Dr. Leslie opined that claimant's impairment is mild. Director's Exhibit 10. The record also contains a letter written in 1999 by Dr. Gianopoulos, claimant's treating physician for over thirty years. Dr. Gianopoulos indicated that he had been treating claimant for pneumoconiosis, and opined that claimant is totally disabled from his pneumoconiosis. Claimant's Exhibit 1.

administrative law judge also found that claimant's "at most mild pulmonary impairment would not prevent him from doing his usual coal mine employment." Decision and Order-Denying Benefits at 5 (unpaginated). We hold that the administrative law judge permissibly found that the opinion of Dr. Gianopoulos is not well documented and reasoned, *see Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149(1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985), and that the reports of Drs. Arora, Smith and Leslie are well documented and reasoned. *See Clark, supra*; *Fields, supra*. In addition, we affirm the administrative law judge's finding that the medical opinions diagnosing a mild pulmonary impairment do not demonstrate total disability in this case. *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986); *see generally Hillibush v. U.S. Department of Labor*, 853 F.2d 197, 11 BLR 2-223 (3d Cir. 1988)(where the court remanded the case for consideration of the miner's physical limitations and the requirements of his usual coal mine employment). Consequently, we affirm the administrative law judge's finding that the medical opinion evidence does not demonstrate total disability pursuant to Section 718.204(c)(4).

Accordingly, we affirm the administrative law judge's finding that total disability is not established pursuant to Section 718.204(c). Inasmuch as we affirm the administrative law judge's finding that claimant has failed to establish total disability pursuant to Section 718.204(c), one of the essential elements of entitlement pursuant to Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we affirm the administrative law judge's denial of benefits.

Accordingly, the administrative law judge's Decision and Order-Denying Benefits is affirmed.

SO ORDERED.

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[4] In addition, we affirm the administrative law judge's finding of twelve years of coal mine employment, despite claimant's assertion that he had thirteen years of coal mine employment. Claimant would not derive any greater benefit from a finding of thirteen years of coal mine employment in this case, therefore, any error by the administrative law judge in finding twelve years of coal mine employment rather than thirteen years of coal mine employment would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Finally, we reject claimant's assertion that he is entitled to an interim presumption. The earliest application for benefits in this case was filed in 1990. The interim presumption contained in 20 C.F.R. §727.203 is only applicable to claims filed prior to March 31, 1980. *See* 20 C.F.R. §718.2.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge