

BRB No. 05-0865 BLA

CHARLES FREDDIE BROCK)
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 Claimant-Petitioner)
)
 v.)
)
 NALLY & HAMILTON ENTERPRISES) DATE ISSUED: 07/27/2006
)
 and)
)
 LIBERTY MUTUAL INSURANCE GROUP)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

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

Francesca L. Maggard (Lewis and Lewis Law Offices), Hazard, Kentucky, for employer.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 (03-BLA-6378) of Administrative Law Judge Pamela Lakes Wood (the administrative law judge) 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 ten 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 evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the Director, Office of Workers' Compensation Programs (the Director), failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. Claimant also challenges 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)(1). Further, claimant contends that the evidence is sufficient to establish total disability at 20 C.F.R. §718.204(b). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director filed a limited response in a letter brief, urging the Board to reject claimant's contention that he failed to provide claimant with a complete and credible pulmonary evaluation.¹

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).

Claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Specifically, claimant asserts that the administrative law judge improperly relied on the qualifications of the physicians submitting negative x-ray readings, and the numerical superiority of the negative x-ray readings. The record consists of four interpretations of three x-rays, dated September 25, 2001, March 18, 2003 and March 16, 2004.² Of the four x-ray interpretations, one reading is positive for pneumoconiosis,

¹Since the administrative law judge's length of coal mine employment finding and his findings at 20 C.F.R. §718.202(a)(2)-(4) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

²The record also contains Dr. Armstrong's reading of the September 25, 2001 x-ray. Director's Exhibit 9a. In the "impression" section of his report, Dr. Armstrong noted atelectasis versus fibrotic changes in the mid lungs bilaterally and possible hyperinflation or emphysematous change in the left upper lobe. *Id.* The administrative law judge stated that

Director's Exhibit 9a, and three readings are negative for pneumoconiosis, Director's Exhibits 11, 27; Employer's Exhibit 1. While Dr. Simpao, who is not a B reader or a Board-certified radiologist, read the September 25, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 9a, Dr. Wheeler, a B reader and a Board-certified radiologist, read this x-ray as negative for pneumoconiosis, Director's Exhibit 11. Dr. Dahhan, a B reader, read the March 18, 2003 x-ray as negative for pneumoconiosis. Director's Exhibit 27. Similarly, Dr. Broudy, a B reader, read the March 16, 2004 x-ray as negative for pneumoconiosis. Employer's Exhibit 1. After considering the quantitative and qualitative nature of the conflicting x-rays, the administrative law judge found the x-ray evidence insufficient to establish the existence of pneumoconiosis.

The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge must consider the quantity of the evidence in light of the difference in qualifications of the readers. *Staton v. Norfolk & Western Railroad 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). In this case, the administrative law judge properly accorded greater weight to the x-ray readings by physicians who are qualified as B readers and/or Board-certified radiologists. *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The administrative law judge specifically stated that "the preponderance of the x-ray readings, including all of the readings by [B readers] and the single reading by the most qualified reader [a dually qualified B reader and Board-certified radiologist], were negative for pneumoconiosis." Decision and Order at 10. Thus, since the administrative law judge reasonably considered the quantitative nature and the qualitative nature of the conflicting x-ray readings, we reject claimant's assertion that the administrative law judge improperly relied on the qualifications of the physicians submitting negative x-ray readings, and the numerical superiority of the negative x-ray readings. *Staton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87. Further, since it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).³

Claimant next contends that the Director failed to provide him with a complete,

"[t]he x-ray reading by Dr. Armstrong that is not in compliance with the ILO system lacks probative value under...[Section 718.202(a)(1)] and will not be addressed here." Decision and Order at 10.

³Claimant generally suggests that the administrative law judge may have selectively analyzed the x-ray evidence. Claimant provides no support for his contention, however, and the Decision and Order reflects that the administrative law judge properly considered all of the x-ray evidence, as discussed *supra*, without engaging in a selective analysis. Decision and Order at 10. Thus, we reject claimant's suggestion.

credible pulmonary evaluation, sufficient to constitute an opportunity to substantiate his claim, as required by the Act. Specifically, claimant argues that “the ALJ concluded that Dr. Simpao’s report was based merely upon an erroneous x-ray interpretation, and that said physician had not explained how his findings supported a diagnosis of pneumoconiosis.” Claimant’s Brief at 3. The Director maintains that the statutory obligation to provide claimant with a complete pulmonary evaluation has been fulfilled.

With regard to Section 718.202(a)(4), the administrative law judge considered the opinions of Drs. Simpao, Broudy, and Dahhan. Dr. Simpao appears to have diagnosed both “clinical” pneumoconiosis and “legal” pneumoconiosis.⁴ Specifically, in a report dated September 25, 2001, Dr. Simpao diagnosed coal workers’ pneumoconiosis 1/1 based on an x-ray reading and coal dust exposure. Director’s Exhibit 9a. In addition, in an attached form, Dr. Simpao checked a box marked “Yes” in response to a question asking if claimant has an occupational lung disease caused by his coal mine employment. *Id.* Further, in response to a question asking for the basis of this diagnosis, Dr. Simpao stated, “findings on chest x-ray and arterial blood gas along with physical findings and symptomatology.” *Id.* Neither Dr. Broudy nor Dr. Dahhan diagnosed “legal” pneumoconiosis.⁵ Dr. Broudy opined that claimant does not have coal workers’ pneumoconiosis, silicosis or any chronic lung disease caused by the inhalation of coal mine dust. Employer’s Exhibit 1. Similarly, Dr. Dahhan opined that claimant has no occupational pneumoconiosis or pulmonary disability secondary to coal dust exposure. Director’s Exhibit 27. The administrative law judge properly discounted Dr. Simpao’s diagnoses because the x-ray Dr. Simpao relied upon to support his diagnoses was reread by a better qualified physician as negative for pneumoconiosis. *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). In addition, the administrative law judge properly discounted Dr. Simpao’s opinion because Dr. Simpao failed to explain his conclusion.⁶ *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v.*

⁴A finding of either “clinical” pneumoconiosis, *see* 20 C.F.R. §718.201(a)(1), or “legal” pneumoconiosis, *see* 20 C.F.R. §718.201(a)(2), is sufficient to support a finding of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

⁵“Legal” pneumoconiosis includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R §718.201(a)(2).

⁶In weighing the conflicting medical opinions at Section 718.202(a)(4), the administrative law judge stated, “I find Dr. Dahhan’s and Dr. Broudy’s to be better reasoned and documented in that their opinions are supported by the normal or near normal findings on testing.” Decision and Order at 12. The administrative law judge further stated that “[s]uch normal results require little discussion.” *Id.*

However, in considering Dr. Simpao’s opinion at Section 718.202(a)(4), the administrative law judge stated that “[t]he only articulated basis for Dr. Simpao’s diagnosis

Island Creek Coal Co., 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Based on his discounting of Dr. Simpao's opinion,⁷ the administrative law judge concluded that claimant failed to establish that he suffers from either "clinical" pneumoconiosis or "legal" pneumoconiosis.

In response to claimant's assertion, the Director contends that "the ALJ merely found Dr. Simpao's diagnosis less credible because it was called into question by other, more probative evidence." Director's Letter Brief at 2. Further, the Director contends that "[u]nder those circumstances, there is no violation of the Director's duty to provide claimant with a credible examination." *Id.* The Director states that "[a]lthough [the administrative law judge] criticized Dr. Simpao's diagnosis of clinical coal workers' pneumoconiosis as somewhat unexplained and 'essentially conclusory[,] she ultimately decided against [c]laimant based on her finding that the reports of Drs. Broudy and Dahhan [are] better reasoned and documented than that of Dr. Simpao."⁸ *Id.* Hence, the Director argues that, because the administrative law judge found Dr. Simpao's opinion less credible, rather than

of pneumoconiosis, stated on the addendum to the report, is "findings on chest x-ray and arterial blood gas along with physical findings and symptomatology." (DX 9a). *Id.* Further, the administrative law judge stated that "Dr. Simpao does not explain how the arterial blood gases, physical findings, and described symptoms led him to his conclusions." *Id.* The administrative law judge additionally stated:

Moreover, even if it is conceded that [c]laimant has some impairment, Dr. Simpao has articulated no cogent reason for attributing that impairment to coal mine dust. He has not even addressed the possible contribution by [claimant's] 30 pack years of cigarette smoking. Although his assumption of 11 years of coal mining is essentially accurate, coal dust exposure alone is an insufficient articulated basis for a diagnosis of pneumoconiosis.

Id.

⁷The administrative law judge did not discredit Dr. Simpao's opinion entirely. Rather, the administrative law judge found that Dr. Simpao's opinion was outweighed by the contrary opinions of Drs. Broudy and Dahhan.

⁸The Director, Office of Workers' Compensation Programs (the Director), states that "[t]he ALJ noted that Dr. Simpao's positive x-ray reading was undermined by a reader with superior credentials who interpreted the x-ray as negative." Director's Letter Brief at 2. The Director additionally states that "the ALJ found that the objective testing relied on by employer's experts produced normal or near normal results and supported their conclusions." *Id.*

not credible, “the [c]laimant’s argument that he is entitled to another pulmonary examination from the Director must be rejected.” *Id.* We agree with the reasoning and the position taken by the Director, whose duty it is to ensure the proper enforcement and lawful administration of the Act, *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-89-90 (1994); *Pendley v. Director, OWCP*, 13 BLR 1-23 (1989)(*en banc order*), that a remand of the case for a full pulmonary evaluation is not warranted. *See generally Cline v. Director, OWCP*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992). Therefore, we decline to remand this case on that basis.

In light of our affirmance of the administrative law judge’s finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of entitlement, we affirm the administrative law judge’s denial of benefits under 20 C.F.R. Part 718.⁹ *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*).

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

SO ORDERED.

⁹In view of our disposition of the case at 20 C.F.R. §718.202(a), we decline to address claimant’s contentions at 20 C.F.R. §718.204(b). *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*).

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge