

BRB No. 05-0876 BLA

HERBERT CAIN, JR. )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 GAJK COAL CORPORATION ) DATE ISSUED: 03/27/2006  
 )  
 and )  
 )  
 OLD REPUBLIC INSURANCE, )  
 INCORPORATED )  
 )  
 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 – Denying Benefits of Rudolf L. Jansen,  
Administrative Law Judge, United States Department of Labor.

Phillip Lewis, Hyden, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for  
employer.

BEFORE: DOLDER, Chief Administrative Appeals Judge, SMITH and  
BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2003-BLA-6582) of Administrative  
Law Judge Rudolf L. Jansen denying benefits on a subsequent 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 seventeen years, ten months and two weeks of qualifying coal mine

employment, and noted that the claim before him, filed on February 1, 2002, was a subsequent claim subject to the provisions at 20 C.F.R. §725.309(d). After determining that claimant's prior claim had been denied for failure to establish the existence of pneumoconiosis or disability causation, the administrative law judge found that the weight of the newly-submitted evidence was insufficient to establish the existence of clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), thus claimant could not establish disability causation pursuant to 20 C.F.R. §718.204(c). Consequently, the administrative law judge denied the claim pursuant to 20 C.F.R. §725.309(d), as claimant had failed to demonstrate that one of the applicable conditions of entitlement previously adjudicated against him had changed since the prior denial.

On appeal, claimant challenges the administrative law judge's weighing of the evidence in finding that the newly-submitted x-ray and medical opinion evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1), (4). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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 Decision and Order is supported by substantial evidence and contains no reversible error. The administrative law judge reviewed the newly-submitted x-ray evidence pursuant to Section 718.202(a)(1), and accurately determined that the film dated May 6, 2002 was interpreted as positive for pneumoconiosis by two B readers, Drs. Aycoth and Cappiello, and as negative by Dr. Wiot, a dually qualified Board-certified radiologist and B reader; the film dated July 30, 2002 was interpreted as negative by Dr. Wicker, a B reader; and the film dated August 14, 2002 was interpreted as negative by Dr. Jarboe, a B reader. Decision and Order at 7, 15. After considering both the quality and quantity of the evidence, the administrative law judge permissibly found that the weight of the new x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), as the preponderance of interpretations by highly qualified physicians was negative for pneumoconiosis. Decision and Order at 15; *see 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).<sup>1</sup>

---

<sup>1</sup> The administrative law judge determined that this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner was

Claimant also contends that the administrative law judge erred in failing to credit claimant's testimony and the opinions of claimant's treating physicians in finding the weight of the new evidence insufficient to establish the existence of legal pneumoconiosis at Section 718.202(a)(4). Specifically, claimant asserts that the opinions of his treating physicians, Drs. Chaney and Koura, are reasoned, documented, and entitled to great weight, and that claimant's testimony relating to his symptoms, exposure and work history supports these opinions and establishes the presence of pneumoconiosis. Claimant's arguments essentially amount to a request to reweigh the evidence, which is beyond the Board's scope of review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

In evaluating the newly-submitted medical opinions of record, the administrative law judge determined that the opinions of Drs. Chaney and Koura were not entitled to deference based solely on their status as treating physicians pursuant to 20 C.F.R. §718.104(d), as the record did not reflect that they possessed any special qualifications. Decision and Order at 16-17; *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). The administrative law judge also was unable to discern whether either physician considered an accurate coal mine employment history in attributing claimant's respiratory condition to coal dust exposure. Decision and Order at 16; *see generally Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988). Further, although Drs. Chaney and Koura indicated that they diagnosed pneumoconiosis based on objective data, *i.e.*, x-rays, pulmonary function tests and abnormal diagnostic studies, the administrative law judge found their opinions to be incomplete and unreasoned because the physicians failed to explicitly identify the objective evidence they relied upon or explain how it supported their diagnosis. Decision and Order at 16; Director's Exhibits 22, 24; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge thus acted within his discretion in according little weight to the opinions of Drs. Chaney and Koura, *see* 20 C.F.R. §718.104(d)(5); *Williams*, 338 F.3d 501, 22 BLR 2-625; *Nat'l Mining Ass'n v. U.S. Dep't of Labor*, 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002); and greater weight to the contrary opinion of Dr. Branscomb, that claimant had asthma caused by smoking but no respiratory condition aggravated or caused by coal dust exposure, which the administrative law judge found to be well reasoned, documented, and supported by the opinions of Drs. Jarboe and Wicker. Decision and Order at 17-18; *see Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). While the administrative law judge found that claimant was a credible witness, *see* Decision and Order at 5-6, the regulations provide that a determination of the existence of pneumoconiosis "shall not be made solely on the basis of a living miner's testimony." 20 C.F.R. §718.202(a)(4)(c); *see*

---

last employed in the coal mine industry in the Commonwealth of Kentucky. Decision and Order at 6 n.2; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Decision and Order at 17. Thus, as substantial evidence supports the administrative law judge's finding that the newly-submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), we affirm his denial of benefits pursuant to 20 C.F.R. §725.309(d).

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

---

JUDITH S. BOGGS  
Administrative Appeals Judge