

BRB No. 05-0807 BLA

BUSTER BROCK)
)
 Claimant-Petitioner)
)
 v.)
)
 SHAMROCK COAL COMPANY,) DATE ISSUED: 05/31/2006
 INCORPORATED)
)
 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 – Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 – Denial of Benefits (04-BLA-5566) of Administrative Law Judge Robert L. Hillyard rendered 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).¹ After crediting claimant with thirty-two years of coal mine employment, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), and total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4), and that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim, as required by the Act. Claimant also argues that the administrative law judge erred in finding that claimant is not totally disabled pursuant to 20 C.F.R. §718.204(b). Employer responds in support of the administrative law judge's denial of benefits. The Director has filed a limited response, requesting that the Board reject claimant's assertion that the case must be remanded to provide claimant with a complete, credible pulmonary evaluation.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant first contends that the administrative law judge erred in finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).² The relevant evidence consists of interpretations of four x-rays taken on January 12, 2005; January 25, 2003; September 27, 2002; and May 7, 2002.³ Director's

¹ Claimant filed his claim for benefits on March 27, 2002. Decision and Order at 2, 7; Director's Exhibit 2.

² Because no party challenges the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 8-9; Employer's Brief at 11.

³ Dr. Dahhan, a B reader, interpreted claimant's January 12, 2005, x-ray as negative for pneumoconiosis. Employer's Exhibit 3. Although Dr. Baker, a B reader, interpreted claimant's January 25, 2003, x-ray as positive for pneumoconiosis, Director's Exhibit 13, Dr. Wiot, a Board-certified radiologist and B reader, interpreted this x-ray as negative for the disease. Director's Exhibit 14; Employer's Exhibit 3. Dr. Broudy, a B reader, interpreted claimant's September 27, 2002, x-ray as negative for pneumoconiosis. Employer's Exhibit 1. Although Dr. Simpao, who has no radiological qualifications, interpreted claimant's May 7, 2002, x-ray as positive for pneumoconiosis, Director's Exhibit 9, Dr. Wiot, a Board-certified radiologist and B reader, interpreted this x-ray as negative for the disease. Director's Exhibit

Exhibits 9-14; Employer's Exhibits 1, 3. In considering the x-ray evidence, the administrative law judge acted within his discretion in crediting Dr. Wiot's negative interpretation of the 2003 x-ray over Dr. Baker's positive interpretation of this film, based upon Dr. Wiot's dual qualifications as a Board-certified radiologist and B reader. *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); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 8. Similarly, the administrative law judge acted within his discretion in crediting Dr. Wiot's negative interpretation of the 2002 x-ray over Dr. Simpao's positive interpretation, based upon Dr. Wiot's dual qualifications. *Id.* The only other x-ray interpretations of record are negative for pneumoconiosis. Based on his consideration of the number of positive and negative interpretations of each x-ray and the qualifications of readers, the administrative law judge rationally found that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).⁴ Consequently, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).⁵

Claimant also contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Specifically, claimant argues that the administrative law judge erred in finding that Dr. Baker's opinion of pneumoconiosis was not reasoned because it was based only on his positive x-ray interpretation that the administrative law judge found was contrary to the weight of the evidence, and because the record contains subsequent negative x-rays. In a report dated January 25, 2003, Dr. Baker diagnosed coal workers' pneumoconiosis, 1/0, based on an abnormal x-ray and significant history of coal dust exposure. Director's Exhibit 13 (Dr. Baker's report at 2). Dr. Baker recorded a thirty-two year coal mine employment history, a thirty year one pack per day smoking history, and normal pulmonary function study and blood gas study results.

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⁴ Any error in the administrative law judge's failure to consider the interpretation of Dr. Wiot of the September 27, 2002 x-ray, is harmless, as it is negative for pneumoconiosis and therefore merely lends further support for the administrative law judge's determination. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); Decision and Order at 4, 8; Director's Exhibit 12.

⁵ We reject claimant's assertion that the administrative law judge "may have selectively analyzed the x-ray evidence" as claimant has provided no support for his assertion. Claimant's Brief at 3.

Contrary to claimant's contention, the administrative law judge rationally found Dr. Baker's diagnosis of pneumoconiosis was not reasoned because it was based only on an abnormal chest x-ray and coal dust exposure history. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985); Decision and Order at 11. Although claimant asserts that Dr. Baker's opinion of coal workers' pneumoconiosis was based on his physical examination of claimant, pulmonary function and blood gas studies, and smoking history, in addition to a positive chest x-ray and coal dust exposure history, Dr. Baker explicitly stated that his diagnosis of coal workers' pneumoconiosis was based on an abnormal x-ray and significant history of coal dust exposure. Director's Exhibit 13 (Dr. Baker's report at 2). Consequently, we affirm the administrative law judge's treatment of Dr. Baker's opinion at Section 718.202(a)(4). Thus, the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) is affirmed.

Claimant further contends that the Director failed to fulfill his statutory obligation to provide claimant with a complete pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required under Section 413(b) of the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.401, 725.405(b); see *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990)(*en banc*). Claimant argues that the Director failed to provide him with a credible pulmonary evaluation in view of the fact that the administrative law judge found Dr. Simpao's report neither well-reasoned nor well-documented with respect to Section 718.202(a)(4). In the instant case, claimant selected Dr. Simpao to perform his Department of Labor-sponsored pulmonary evaluation. Director's Exhibit 8. In a report dated May 7, 2002, Dr. Simpao diagnosed coal workers' pneumoconiosis 1/1, and performed a chest x-ray, pulmonary function and blood gas studies, electrocardiogram, and recorded claimant's coal mine employment and smoking histories. Director's Exhibit 9. In his analysis of the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge rationally found that Dr. Simpao's diagnosis of pneumoconiosis was not well-reasoned or well-documented because it was based solely on a coal dust exposure history and a positive x-ray which had been re-read as negative, by a Board-certified radiologist and B reader. *Cornett*, 227 F.3d 569, 22 BLR 2-107; *Worhach*, 17 BLR 1-105; *Taylor*, 8 BLR 1-405. The administrative law judge's finding that Dr. Simpao's diagnosis of pneumoconiosis was merely a diagnosis of clinical, and not legal, pneumoconiosis because it was based only upon a positive x-ray and coal dust exposure history, does not render Dr. Simpao's opinion not complete or not credible, but merely reflects Dr. Simpao's professional opinion as to the type of pneumoconiosis claimant has. As the Director correctly asserts, the administrative law judge's rejection of Dr. Simpao's opinion of clinical pneumoconiosis because it was based on a positive x-ray which was reread as negative by a better qualified reader, Dr. Wiot, does not render Dr. Simpao's

opinion not complete or not credible; the Director is not required to provide claimant with a medical evaluation that trumps other contrary, negative evidence in the record. Consequently, we reject claimant's contention that the Director failed to provide him with a complete pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim.

In light of our affirmance of 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), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Consequently, we need not address claimant's remaining contentions regarding the administrative law judge's finding that the evidence is insufficient to establish total disability at Section 718.204(b). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge