

BRB No. 06-0150 BLA

EARL E. BALL)
)
 Claimant-Petitioner)
)
 v.)
)
 SHAMROCK COAL COMPANY) DATE ISSUED: 05/25/2006
)
 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 Denying Benefits of William S. Colwell,
Administrative Law Judge, United States Department of Labor.

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

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

Rita Roppolo (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 Denying Benefits (03-BLA-6527) of
Administrative Law Judge William S. Colwell on a subsequent claim¹ filed pursuant to

¹ Claimant filed his first application for benefits on January 31, 1994. Director's
Exhibit 1. In a Decision and Order issued May 28, 1996, Administrative Law Judge
Christine McKenna denied benefits. Claimant appealed and the Board affirmed the

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 initially credited claimant with 19.5 years of qualifying coal mine employment. Adjudicating this subsequent claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that because claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b), claimant also established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. The administrative law judge, therefore, conducted a review of all the evidence of record on the merits of entitlement. The administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find the existence of pneumoconiosis established by x-ray evidence and medical opinion evidence under Section 718.202(a)(1) and (a)(4), and in failing to find total respiratory disability under Section 718.204(b)(2)(iv).² Claimant additionally contends that because the administrative law judge discredited the medical opinion of Dr. Simpao, a physician who examined him at the behest of the Department of Labor, the Director, Office of Workers' Compensation Programs (the Director), failed to provide claimant with a complete and credible pulmonary examination as required by Section 413(b) of the Act, 30 U.S.C. §923(b), to substantiate his claim. In response, employer urges affirmance of the denial of benefits. The Director has filed a limited response letter, arguing that the pulmonary evaluation administered by Dr. Simpao fully satisfies the Director's obligation to provide claimant with a complete, credible pulmonary evaluation as required by the Act because the administrative law judge credited Dr. Simpao's opinion, but simply accorded it less weight than the contrary opinions.³

denial. *Ball v. Shamrock Coal Co.*, BRB No. 96-1189 BLA (Apr. 15, 1997) (unpub.); Director's Exhibit 1. Claimant took no further action on this claim. Subsequently, claimant filed a subsequent claim on October 12, 2001. Director's Exhibit 3.

² Claimant's argument challenging the administrative law judge's total disability determination is misplaced since a review of the Decision and Order reveals that the administrative law judge relied on the medical opinion evidence to find that claimant suffered from a totally disabling respiratory or pulmonary impairment, thereby establishing this requisite element of entitlement pursuant to 20 C.F.R. §718.204(b). Decision and Order at 21.

³ We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(2)-(3), 718.203, 718.204(b)(2)(i)-(iii), and 725.309 because these determinations are unchallenged on

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 the 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'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In challenging the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1), claimant argues that the administrative law judge erred by placing substantial weight on the numerical superiority of the x-ray interpretations and by relying exclusively on the qualifications of the physicians providing the x-ray interpretations. Claimant contends that an administrative law judge is not required to defer to a physician with superior qualifications and may not selectively analyze the x-ray evidence.

Section 718.202(a)(1) provides, in pertinent part, "where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration *shall* be given to the radiological qualifications of the physicians interpreting such X-rays." 20 C.F.R. §718.202(a)(1) [emphasis added]. The administrative law judge considered the radiological expertise of the physicians and properly accorded greater weight to the negative interpretations of Drs. Poulos and Wiot, physicians who are Board-certified radiologists and B-readers, and of Drs. Broudy and Dahhan, physicians who are B-readers, and permissibly accorded less weight to the positive interpretations rendered by Dr. Simpao, who possessed no demonstrated radiological expertise and Dr. Baker, who is a B-reader. 20 C.F.R. §718.202(a)(1); *see Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 17; Director's Exhibits 9, 10, 13; Employer's Exhibits 2, 4, 8. Hence, the administrative law judge properly found that all four of the newly submitted x-ray interpretations of record were negative for the existence of pneumoconiosis. *See Staton*, 65 F.3d at 59, 19 BLR at 2-280; Decision and Order at 17. Finding no error in Administrative Law Judge Christine McKenna's Section 718.202(a)(1) determination, as affirmed by the Board, the administrative law judge adopted her analysis of the previously submitted readings of nine x-ray films, which consisted of twenty negative interpretations rendered by physicians with superior radiological expertise and five positive interpretations provided by physicians whose radiological expertise was unknown. Hence, the administrative law judge, within a permissible exercise of his discretion, found that the previously submitted x-ray evidence considered in conjunction with the newly submitted x-ray evidence was insufficient to

appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 3, 20-22.

establish the existence of pneumoconiosis. Because the administrative law judge's determination to accord dispositive weight to the negative interpretations rendered by the physicians with superior, demonstrated radiological qualifications was rational and supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). In addition, we reject claimant's contention that the administrative law judge "may have selectively analyzed" the x-ray evidence because claimant has not provided any support for that assertion, nor does a review of the evidence and the administrative law judge's Decision and Order reveal that he engaged in a selective analysis of the x-ray evidence. See *White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-4 (2004).

Claimant contends that because the administrative law judge discredited the opinion of Dr. Simpao, a physician who conducted claimant's pulmonary evaluation at the behest of the Department of Labor, on the basis that his conclusions were unexplained and undermined by a negative x-ray, the Director has failed to provide claimant with a complete, credible pulmonary examination sufficient to substantiate his claim. The Director responds, asserting that he is only required to provide claimant with a complete and credible examination as required by the Act, not necessarily a dispositive one. The Director avers further that the administrative law judge's conclusion that other physicians' opinions were more persuasive does not demonstrate that he abdicated his statutory obligation to provide claimant with a complete pulmonary evaluation. The Director's position has merit.

In assessing the credibility of the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge found that, although Dr. Simpao's opinion diagnosing the presence of pneumoconiosis was based on claimant's symptomatology history, a physical examination, and objective tests, the reliability of his opinion was undermined by Dr. Simpao's reliance on his positive interpretation of a chest x-ray, which was subsequently read negative by Dr. Wiot, a physician with superior radiological expertise and by the weight of the negative x-ray readings by more qualified physicians. See *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003); *Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (*en banc*) (administrative law judge must consider evidence which calls into question reliability of tests upon which physician's opinion is based in determining whether report is documented and reasoned); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); Decision and Order at 9. In addition, the administrative law judge accorded less weight to the coal workers' pneumoconiosis diagnosis of Dr. Simpao because Dr. Simpao failed to explain how claimant's electrocardiogram results and symptoms of wheezing, productive cough, shortness of breath, chest pain, orthopnea, and ankle edema were indicative of

pneumoconiosis and failed to discuss how the abnormal findings on physical examination factored into his diagnosis. This was rational. See *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983) (determination as to whether physician's report is sufficiently reasoned and documented is credibility matter for administrative law judge); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order at 9-10; Director's Exhibit 9. Although the administrative law judge determined that Dr. Simpao's opinion was entitled to less weight, this determination is not tantamount to a finding that Dr. Simpao's opinion was worthy of no weight, and thus, lacking credibility altogether. Because Dr. Simpao clearly provided an opinion addressing all issues of entitlement, we reject claimant's argument that the Director failed to provide claimant with a complete, credible pulmonary examination. See *Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1992), *alj decision summarily aff'd*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992) (court retained jurisdiction.); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

Claimant similarly argues that the administrative law judge erred in discrediting the opinion of Dr. Baker because the administrative law judge may not discredit the opinion of a physician whose report is based on a positive x-ray interpretation that is contrary to the administrative law judge's finding that the weight of the x-ray evidence is negative or, because the record contains subsequent negative x-ray interpretations. The administrative law judge, within a reasonable exercise of his discretion, found that Dr. Baker's diagnosis of "coal workers' pneumoconiosis, category 1/0 based on abnormal x-ray and significant history of coal dust exposure" was undermined because Dr. Baker relied primarily on his positive x-ray reading and claimant's history of coal dust exposure in rendering his opinion while Drs. Broudy and Dahhan relied on physical examinations, claimant's significant smoking history and symptomatology, negative chest x-ray readings, normal CT scan results, non-qualifying pulmonary function studies, and non-qualifying arterial blood gas studies, which supported their conclusions that claimant did not suffer from pneumoconiosis or a medical condition affected by his exposure to coal dust. See *Williams*, 338 F.3d at 514, 22 BLR at 2-649 (administrative law judge may not rely on physician's pneumoconiosis diagnosis when physician bases it entirely on x-ray evidence that was discredited by administrative law judge); Decision and Order at 19; Director's Exhibit 10; Employer's Exhibits 2, 4. Consequently, the administrative law judge determined that the opinions of Drs. Broudy and Dahhan outweighed the contrary opinion of Dr. Baker because the opinions of Drs. Broudy and Dahhan were more reliable, better documented and reasoned, and better supported by their physical examinations; as such, he permissibly accorded their opinions dispositive weight. See *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003) (administrative law judge as factfinder should decide whether physician's report is sufficiently reasoned and documented); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v.*

U.S. Steel Corp., 8 BLR 1-46 (1985); Employer’s Exhibits 4, 9, 10. We, therefore, reject claimant’s argument. Accordingly, because claimant has not otherwise challenged the administrative law judge’s crediting of the opinions of Drs. Broudy and Dahhan that claimant does not suffer from pneumoconiosis or a respiratory condition arising out of coal mine employment, we affirm the administrative law judge’s finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Based on the foregoing, therefore, we affirm the administrative law judge’s determination that claimant failed to affirmatively establish the existence of pneumoconiosis pursuant to Section 718.202(a) as this finding is rational, contains no reversible error, and is supported by substantial evidence. Because claimant has failed to satisfy his burden to establish the existence of pneumoconiosis, a requisite element of entitlement under Part 718, we affirm the administrative law judge’s denial of benefits. 20 C.F.R. §718.202(a); *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge