

BRB No. 05-0557 BLA

RODNEY B. HUFF)
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 Claimant-Petitioner)
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 v.)
)
 LONE MOUNTAIN PROCESSING,)
 INCORPORATED)
)
 and)
)
 ARCH COAL, INCORPORATED)
)
 Employer/Carrier-)
 Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

DATE ISSUED: 11/22/2005

DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

Denise M. Davidson (Barret, Haynes, May, Carter & Davidson, P.S.C.), Hazard, Kentucky, for employer.

Helen H. Cox (Howard 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2003-BLA-5561) of Administrative Law Judge Joseph E. Kane 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). The administrative law judge found that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) or total disability at 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in not finding the existence of pneumoconiosis and total disability established. Claimant also argues, in light of the administrative law judge’s failure to credit the opinion of Dr. Baker on the issue of pneumoconiosis, that the Director, Office of Workers’ Compensation Programs, (the Director) failed to provide claimant with a complete, credible pulmonary evaluation sufficient to substantiate his claim as required under the Act. 30 U.S.C. §923(b). Thus, claimant contends that he either be awarded benefits or that the case be remanded to provide him a complete, credible pulmonary evaluation. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. Employer contends that the evidence failed to establish the existence of pneumoconiosis and total respiratory disability, and that claimant was provided a complete, credible pulmonary evaluation. The Director responds, contending that claimant was provided a complete, credible pulmonary evaluation as required by the Act, pursuant to Section 413(b), 30 U.S.C. §923(b) and that as Dr. Baker did not diagnose total respiratory disability, it is unnecessary to remand the case as claimant, even if the case were remanded for Dr. Baker to clarify his opinion regarding the existence of pneumoconiosis, would still be unable to establish total disability, a required element of entitlement.

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 by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner’s claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 718.202(a)(1), claimant contends that the administrative law judge “need not defer to a doctor with superior qualifications” and “need not accept as conclusive the numerical superiority of x-ray interpretations.” Claimant’s Brief at 3. Claimant further

suggests that the administrative law judge “may have” improperly selectively analyzed the x-ray evidence of record. Claimant’s Brief at 3. We find no merit in these assertions. The administrative law judge rationally found that claimant had not established the presence of pneumoconiosis by a preponderance of the x-ray evidence as the administrative law judge considered the radiological qualifications of each reader and the quality of each interpretation, and permissibly determined that the single positive interpretation of pneumoconiosis did not outweigh the greater number of negative readings from those physicians with specialized qualifications in the field of radiology. Decision and Order – Denying Benefits at 5, 8, 9; Director’s Exhibits 8,10, 30; 20 C.F.R. §718.202(a)(1); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985).¹ This determination is supported by the record since all of the negative interpretations were submitted by physicians who were either Board-certified radiologists or B-readers, while the single positive reading was interpreted by a physician with no specialized radiological qualifications.² Director’s Exhibits 8, 10, 30. Further, claimant points to no evidence which supports his suggestion that the administrative law judge selectively analyzed the x-ray evidence of record. *See Cox v. Benefits Review Board*, 841 F.2d 706, 11 BLR 2-86 (6th Cir. 1988); *White v. New White Coal Co.*, 23 BLR 1-1, 1-5 (2004).

Pursuant to Section 718.202(a)(4), claimant contends that the administrative law judge’s failure to credit Dr. Baker’s diagnosis of pneumoconiosis does not satisfy the Director’s obligation to provide claimant with a credible pulmonary evaluation. Section 413(b) requires the Director to provide claimant with a complete, credible, pulmonary evaluation which addresses each required element of entitlement, thereby affording claimant the opportunity to substantiate his claim. 30 U.S.C. §923(b). Dr. Baker’s opinion addresses

¹ Since the miner’s last coal mine employment took place in the Commonwealth of Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. Director’s Exhibit 2; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

² A B reader is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination by the National Institute of Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135 n.16, 11 BLR 2-1 n.16 (1987), *reh’g denied* 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). A Board-certified radiologist is a physician who is certified in radiology or diagnostic roentgenology by the American Board of Radiology, Inc. or the American Osteopathic Association. 20 C.F.R. §718.202(a)(ii)(C).

each requisite element of entitlement, including the existence of pneumoconiosis. The administrative law judge, however, gave Dr. Baker's opinion, diagnosing the existence of pneumoconiosis, less weight than the opinion of Dr. Jarboe, who found no pneumoconiosis, because the opinion of Dr. Jarboe provided a more comprehensive explanation for his conclusions and was better documented and reasoned. This was rational. 30 U.S.C. §923(b); Director's Exhibits 8, 10, 16; Decision and Order – Denying Benefits at 6, 7, 9, 10; *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark*, 12 BLR at 1-155; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). Accordingly, because Dr. Baker did address the existence of pneumoconiosis but the administrative law judge gave his opinion, as to the existence of pneumoconiosis less weight than the opinion of Dr. Jarboe, Decision and Order at 10; Employer's Exhibits 1, 16, we agree with the Director that he has fulfilled his statutory obligation of providing claimant with a complete, credible pulmonary evaluation, and remand of the case is not required. Decision and Order at 10; *see Barnes v. ICO Corp.*, 31 F.3d 673, 18 BLR 2-319 (8th Cir. 1994); *Cline v. Director, OWCP*, 917 F.2d 9, 14 BLR 2-102 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1994). We, therefore, affirm the administrative law judge's finding that the existence of pneumoconiosis has not been established at Section 718.202(a)(4).³ *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

Likewise, we reject claimant's argument that claimant established total disability. Both Drs. Baker and Jarboe found that claimant did not have a respiratory impairment. The administrative law judge was not, therefore, required to compare their opinions with the exertional requirements of claimant's usual coal mine employment. *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Boyd v. Freeman United Coal Mining Co.*, 6 BLR 1-159 (1983). Moreover, the administrative law judge properly found that, on weighing the opinions of Drs. Jarboe and Baker along with the pulmonary function and blood gas studies which were non-qualifying, claimant failed to establish total respiratory disability. Decision and Order at 11; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-236 (1987), *aff'd on recon.*, 9 BLR 1-195 (1986). Further, contrary to claimant's contentions, the administrative law judge was not required to consider claimant's condition, age, and limited work experience in determining whether claimant could perform comparable and gainful work outside coal mine employment; nor, is claimant entitled to any presumption that he is totally disabled based on a finding of pneumoconiosis. *White*, 23 BLR at 1-7 n.6; *Taylor v. Evans &*

³ The administrative law judge's findings that the evidence of record failed to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3) and total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Gambrel Co., Inc., 12 BLR 1-83, 1-87 (1988).

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