BRB No. 05-0650 BLA

DONNIE DIXON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
COASTAL COAL COMPANY	)	
	)	DATE ISSUED: 12/12/2005
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 Daniel J. Roketenetz, 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.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (04-BLA-5189) of Administrative Law Judge Daniel J. Roketenetz 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). In a Decision and Order dated April 8, 2005, the administrative law judge credited the miner with at least thirty-three years of coal mine employment,[1] and found that the evidence failed to establish the existence of

[1] The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of

pneumoconiosis at 20 C.F.R. §718.202(a) and failed to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b), (c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence relevant to the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4), and erred in his evaluation of the medical opinion evidence relevant to the issue of total disability at 20 C.F.R. §718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.[2]

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Claimant asserts that the administrative law judge erred in relying almost solely on the qualifications of the interpreting physicians and the numerical superiority of the x-ray interpretations in evaluating the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1). Claimant's Brief at 3. We disagree. In finding the x-ray evidence insufficient to establish the existence of pneumoconiosis, the administrative law judge properly noted

---

the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[2] The administrative law judge's evidentiary rulings pursuant to 20 C.F.R. §725.414, his finding of at least thirty-three years of coal mine employment and his findings that claimant did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) or (3), and further failed to establish the existence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(i)-(iii), are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

that the relevant x-ray evidence of record consists of five readings of three x-rays.[3] Decision and Order at 5-6. A September 23, 2002 x-ray was read once as positive by Dr. Simpao, a physician with no specialized qualifications for the reading of x-rays, and once as negative by Dr. Spitz, a dually qualified B-reader and Board-certified radiologist. Director's Exhibits 9, 21. In addition, a January 22, 2003 x-ray was read once as negative by Dr. Jarboe, a B-reader. Employer's Exhibit 1. Finally, a March 29, 2003 x-ray was read once as positive by Dr. Baker, a B-reader, and once as negative by Dr. Wiot, a dually qualified B-reader and Board-certified radiologist. Director's Exhibits 23, 34. Contrary to claimant's arguments, the administrative law judge properly considered both the quantity and the quality of the x-ray readings of record, and permissibly found that the preponderance of negative readings by B-readers and dually qualified readers outweighs the positive x-ray readings by lesser qualified physicians. *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(*en banc on recon.*); *see Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); Decision and Order at 6-7. Consequently, we affirm the administrative law judge's weighing of the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1) as it is supported by substantial evidence. In addition, we reject claimant's comment that the administrative law judge "may have selectively analyzed" the x-ray evidence. Claimant's Brief at 3. 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 selective analysis of the x-ray evidence.

Claimant also challenges the administrative law judge's finding that the medical opinion evidence does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[4] In evaluating the medical opinion evidence, the administrative law judge found the opinions of Drs. Simpao and Jarboe entitled to probative weight, and he accorded Dr. Baker's opinion little probative weight. The administrative law judge determined that claimant has not established the existence of pneumoconiosis by a preponderance of the evidence pursuant to Section 718.202(a)(4). Decision and Order at

[3] The September 23, 2002 x-ray was also read for quality only (Quality 1) by Dr. Bennett. Director's Exhibit 10.

[4] The evidence contains the medical opinions of Dr. Baker, who opined that claimant suffers from coal workers' pneumoconiosis and chronic bronchitis due to coal dust exposure and smoking, Director's Exhibit 23, Claimant's Exhibit 1, and Dr. Simpao, who also diagnosed coal workers' pneumoconiosis, Director's Exhibits 9, 38, Employer's Exhibit 1. Dr. Jarboe opined that claimant had possible bronchial asthma, unrelated to coal dust exposure, and that the evidence is insufficient to justify a diagnosis of coal workers' pneumoconiosis or any other coal dust related lung disease or impairment. Director's Exhibit 26; Employer's Exhibit 2.

8-11. Contrary to claimant's arguments, the administrative law judge permissibly accorded little weight to Dr. Baker's diagnosis of coal workers' pneumoconiosis as unreasoned because it is based solely on claimant's history of dust exposure and his own readings of a chest x-ray, which was subsequently re-read as negative by a more highly qualified reader, and because the physician failed to point to any other objective data or medical testing in support of his conclusion. *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Hopton v. United States Steel Corp.*, 7 BLR 1-12 (1984); Decision and Order at 9. The administrative law judge further permissibly accorded little weight to Dr. Baker's additional diagnosis of coal dust-related chronic bronchitis because the physician relied only on claimant's subjective complaints and again failed to cite to any objective testing or medical data in support of his conclusion. *See Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Rowe*, 710 F.2d at 255 n.6, 5 BLR at 2-103 n.6; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Further, we affirm the administrative law judge's finding that the remaining medical opinions, while credible, are insufficient to carry claimant's burden of establishing the existence of pneumoconiosis at Section 718.202(a)(4) by a preponderance of the evidence, *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994).

It is within the purview of the administrative law judge to weigh the evidence, draw inferences and determine credibility. *Crisp*, 866 F.2d at 185, 12 BLR at 2-129. Because the administrative law judge examined each medical opinion "in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based," *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103, and explained whether the diagnoses contained therein constituted reasoned medical judgments under Section 718.202(a)(4), we affirm the administrative law judge's finding that the medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-120 (6th Cir. 2000). Consequently, we affirm the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a).

Because we affirm the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a), we need not address claimant's challenge to the administrative law judge's findings in determining that the evidence fails to establish the existence of a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2)(iv). A finding of entitlement to benefits is precluded in this case. *See Trent*, 11 BLR at 1-27.

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

_____
JUDITH S. BOGGS
Administrative Appeals Judge