

BRB No 00-0514 BLA

JOSEPH L. PARKANSKY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
READING ANTHRACITE COMPANY, 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 Denying Benefits Upon Remand and Order Denying Reconsideration of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for employer.

Before: McGRANERY and McATEER, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits Upon Remand and the Order Denying Reconsideration (97-BLA-0860) of Administrative Law Judge Ainsworth H. Brown 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 Claimant filed his application for benefits on July 30, 1996. Director's Exhibit 1. His claim is now before the Board for the second time. Initially, the administrative law judge credited claimant with twenty-six years of coal mine employment and found that the x-ray and medical opinion evidence weighed together did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2000). See *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). Accordingly, he denied benefits.

Upon consideration of claimant's appeal, the Board affirmed the administrative law judge's findings regarding the weight of the medical opinion evidence, but vacated his finding regarding the x-ray evidence because he accorded greater weight to the negative readings of two of employer's radiologists, Drs. Scott and Wheeler, based on their credentials as Associate Professors of Radiology, without considering that one of claimant's radiologists, Dr. Marshall, also possessed teaching credentials in radiology. *Parkansky v. Reading Anthracite Co.*, BRB No. 98-1512 BLA (Aug. 13, 1999)(unpub.). Consequently, the Board remanded the case for the administrative law judge to reweigh the x-ray evidence in light of all the readers' radiological qualifications, and then determine whether the x-ray and medical opinion evidence weighed together established the existence of pneumoconiosis. *Id.*

On remand, the administrative law judge reconsidered Dr. Marshall's positive x-ray readings in light of Dr. Marshall's status as a former Associate Clinical Professor of Radiology at the University of Louisville School of Medicine and the University of Kentucky College of Medicine. The administrative law judge found that consideration of Dr. Marshall's teaching background did not change the weight of the x-ray evidence, because Dr. Marshall's teaching experience was remote in comparison to that of Drs. Wheeler and Scott, who, the record indicated, were still teaching radiology at the Johns Hopkins Medical Institutions. Additionally, the administrative law judge found that Dr. Marshall's readings were outweighed by those of Drs. Wheeler and Scott. The administrative law judge concluded that, "[m]y finding remains unchanged viewing the evidence as a whole, both x-ray readings and medical conclusions as to the existence of a coal dust related respiratory condition." Decision and Order on Remand at 2. Accordingly, he denied benefits.

Claimant timely requested reconsideration on the grounds that, "in addition to Dr. Marshall's teaching credentials, Dr. Smith also has teaching credentials."

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations. Where a citation to the regulations is followed by "(2000)," the reference is to the old regulations.

Claimant's Letter, Nov. 11, 1999. Claimant submitted what he described as "another copy of [Dr. Smith's] curriculum vitae as well as correspondence from Dr. Smith verifying same." *Id.* Review of the record indicates that Dr. Smith's originally submitted curriculum vitae listed the title of "Clinical Assistant Professor," but did not specify whether the professorship was in the field of radiology. Claimant's Exhibit 7.

The evidence claimant proffered with his motion for reconsideration provided new information clarifying that Dr. Smith had been a Clinical Assistant Professor in the radiology departments of the New York, New England, and Philadelphia Colleges of Osteopathic Medicine, and had also participated in training a medical student in a four-week radiology rotation in Dr. Smith's private office of radiology. Letter from Dr. Smith, June 30, 1999, with three certificates attached (unstamped exhibit).

Employer objected to the new evidence, included with claimant's motion for reconsideration, because "[c]laimant had ample opportunity to present this evidence in the course of these proceedings and failed to do so." Employer's Letter, Nov. 24, 1999.

In his Order Denying Reconsideration, the administrative law judge noted employer's objection but did not expressly rule on it. Instead, the administrative law judge found that, even if the new documentation regarding Dr. Smith's radiology teaching experience were considered, Dr. Smith's teaching credentials did not outweigh those of Drs. Wheeler and Scott. Accordingly, the administrative law judge denied reconsideration.

On appeal, claimant contends that the administrative law judge mischaracterized the teaching credentials of Drs. Marshall and Smith, and did not sufficiently explain his findings. Employer responds, urging affirmance, and the Director, Office of Workers' Compensation Programs (the Director), 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 supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act 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 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).

After consideration of the administrative law judge's Decision and Order and Order on Reconsideration, the arguments raised on appeal, and the evidence of

record, we conclude that the Decision and Order and the Order on Reconsideration of the administrative law judge are supported by substantial evidence and contain no reversible error. Contrary to claimant's contentions, the administrative law judge accurately characterized the physicians' radiological teaching credentials and explained why he found that the relative weight of the x-ray readings remained unchanged after consideration of such credentials. See *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). Additionally, the administrative law judge properly weighed the x-ray readings along with the medical opinions of record in finding that the existence of pneumoconiosis was not established. Decision and Order on Remand at 2; see *Williams, supra*. Substantial evidence supports the administrative law judge's finding, and the Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge. *Mays v. Piney Mountain Coal Co.*, 21 BLR 1-59, 1-64 (1997)(Dolder, J., concurring and dissenting); *Anderson*, 12 BLR at 1-113. Consequently, we affirm the administrative law judge's finding that the weight of the x-ray evidence did not support a finding of the existence of pneumoconiosis pursuant to Section 718.202(a)(1), and his finding that "the evidence as a whole, both x-ray readings and medical conclusions as to the existence of a coal dust related respiratory condition," Decision and Order on Remand at 2, did not establish the existence of pneumoconiosis pursuant to Section 718.202(a). See *Williams, supra*.

Accordingly, the administrative law judge's Decision and Order Denying Benefits Upon Remand and Order Denying Reconsideration are affirmed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

J. DAVITT McATEER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge