BRB No. 95-0973 BLA

CHRISTINE BROCK (Widow of ELMER BROCK) Claimant-Petitioner v. EASTOVER MINING COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order of Bernard J. Gilday, Jr., Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Bryan A. Sims (Arter & Hadden), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order (94-BLA-0737) of Administrative Law Judge Bernard J. Gilday, Jr. denying benefits on claims filed pursuant to the

[1] Claimant is Christine Brock, widow of the miner, Elmer Brock, whose application for benefits filed on December 13, 1990 was denied on June 6, 1991. Director's Exhibits 2, 12. The miner died on November 16, 1992, before his scheduled hearing date, and claimant filed her survivor's claim on April 20, 1993. Director's Exhibit 25.

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 credited the miner with thirteen years of coal mine employment, found that his claim was a duplicate claim, and determined that employer was the responsible operator. Citing *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLA 2-10 (6th Cir. 1994), in this case arising within the

jurisdiction of the United States Court of Appeals for the Sixth Circuit, the administrative law judge found that the newly submitted evidence failed to establish a material change in conditions and, accordingly, denied the miner's claim. Regarding the survivor's claim, the administrative law judge determined that claimant was the miner's dependent, but found no entitlement pursuant to 20 C.F.R. §718.205(c) because the evidence failed to establish the existence of pneumoconiosis.[2]

On appeal, claimant contends that the administrative law judge failed to apply the proper regulations and erred in his weighing of the evidence. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.[3]

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 by 30 U.S.C. § 932(a); *O'Keeffe v. Smith, Hinchman & Grylls*

---

[2] Before a finding of death due to pneumoconiosis can be made at 20 C.F.R. §718.205, the existence of pneumoconiosis must be established pursuant to Section 718.202(a)(1)-(4). 20 C.F.R. §§718.201, 718.202; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

[3] We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment, dependency, responsible operator status, and pursuant to Section 718.202(a)(2) and (3). *See Coen v. Director, OWCP,* 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.,* 6 BLR 1-710 (1983).

Associates, Inc., 380 U.S. 359 (1965).

Claimant contends that the administrative law judge should have found the miner entitled to benefits pursuant to 20 C.F.R. §410.414(b)(4).[4] Claimant's Brief at 4. Claimant's argument is without merit. The regulations at 20 C.F.R. Part 718, not Part 410, apply to the miner's claim because it was filed after March 31, 1980. *See* 20 C.F.R. §718.2; *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Director's Exhibit 2.

[4] Section 410.414(b)(4) provides for the finding of entitlement for miners having "many years" of coal mine employment, although fewer than fifteen, where the evidence shows that the miner has a severe lung impairment. 20 C.F.R. §410.414(b)(4).

Claimant, citing *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993), next asserts that the administrative law judge erred by considering only the quantity, and not the quality, of the x-ray evidence. Claimant's Brief at 3-4. We reject claimant's assertion. The administrative law judge considered all the x-rays of record, weighing the eighteen interpretations of nine films in light of the readers' qualifications, and permissibly found the weight of the evidence to be negative for pneumoconiosis. *See Woodward, supra*; *Johnson v. Island Creek Coal Co.*, 846 F.2d 364, 11 BLR 2-161 (6th Cir. 1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 6-8. The administrative law judge's finding is supported by substantial evidence inasmuch as his weighing of the x-ray evidence comports with *Woodward*. *See Woodward, supra*. Therefore, we affirm the administrative law judge's findings that the newly submitted x-ray evidence fails to establish a material change in conditions pursuant to Section 725.309(d) and that the x-ray evidence as a whole is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).[5]

Claimant also contends that the administrative law judge performed no qualitative analysis of the medical opinions of Drs. Bushey and Clarke, both of whom diagnosed pneumoconiosis. Claimant's Brief at 4; Director's Exhibit 23. We reject claimant's contention because the administrative law judge considered both opinions and permissibly determined to accord them less weight than the contrary opinions of the more highly qualified physicians of record. *See Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Thus, we affirm the administrative law judge's finding that the medical opinion evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

---

[5] In evaluating the readers' qualifications, the administrative law judge found Dr. Baker, who read two films as positive, to be board-certified in internal medicine and a B-reader. Decision and Order at 7. This finding is unsupported by the record, *see Tackett v. Director, OWCP*, 7 BLR 1-703 (1985)(*en banc*), which contains no evidence of Dr. Baker's certification. The administrative law judge's error is harmless, *see Larioni v. Director,* OWCP, 6 BLR 1-1276 (1984), in light of his finding that the weight of the x-ray evidence is negative for pneumoconiosis.

Claimant generally contends that the denial of benefits is not supported by substantial evidence and would be contrary to the purpose of the Act. Claimant's Brief at 3. As claimant makes no other specific allegation of error with respect to the law or record evidence, thus failing to provide any basis for review, we affirm the denial of benefits. *See* 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *see also Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

________________JAMES F. BROWN
Administrative Appeals Judge

________________NANCY S. DOLDER
Administrative Appeals Judge