

BRB No. 04-0158 BLA

GEORGE W. THOMASON, JR.)
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 Claimant-Respondent)
)
 v.)
)
 R D & D TRUCKING, INC./C & S) DATE ISSUED: 10/20/2004
 MINING CORPORATION)
)
 and)
)
 WEST VIRGINIA COAL WORKERS')
 PNEUMOCONIOSIS FUND)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order – Award of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

George W. Thomason, Jr., Isaban, West Virginia, *pro se*.

Robert Weinberger (West Virginia Workers' Compensation Defense Division), Charleston, West Virginia, for carrier.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Carrier appeals the Decision and Order - Award of Benefits (02-BLA-0213) of Administrative Law Judge Richard T. Stansell-Gamm rendered on a claim¹ 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 noted the parties' stipulation to at least twenty-five years of coal mine employment. Based on the date of filing, the administrative law judge adjudicated the claim on its merits pursuant to 20 C.F.R. Part 718. Decision and Order at 3. The administrative law judge found that the evidence was sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis provided at 20 C.F.R. §718.304. The administrative law judge further found that claimant's complicated pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Accordingly, benefits were awarded. The administrative law judge also found that benefits should commence as of August 1, 2000.

Carrier appeals, contending that the administrative law judge erred in finding that the x-ray evidence was sufficient to invoke the irrebuttable presumption provided at 20 C.F.R. §718.304. Carrier urges the Board to reverse the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the award of benefits based on the administrative law judge's findings at 20 C.F.R. §718.304.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Section 411(c)(3) of the Act provides an irrebuttable presumption of total disability due to pneumoconiosis, if the evidence proves the miner has complicated pneumoconiosis. 30 U.S.C. §921(c)(3). In order to establish entitlement to benefits, a claimant must also demonstrate that the miner's pneumoconiosis arose out of coal mine employment. 20 C.F.R. §718.203. Complicated pneumoconiosis may be established by any one of three methods enumerated in the statutory provision and the regulations: (1) a

¹ Claimant filed his claim for benefits on December 1, 2000. Director's Exhibit 1. The district director found claimant entitled to benefits on December 5, 2001, based on a finding that claimant had complicated pneumoconiosis. Director's Exhibit 47. After employer controverted the claim, the district director initiated interim benefits and forwarded the case to the Office of the Administrative Law Judges on January 25, 2002 for a hearing. Director's Exhibit 51. A hearing was held before the administrative law judge on October 2, 2002.

chest x-ray which yields one or more large opacities classified as A, B, or C under any one of three classification systems; (2) autopsy or biopsy evidence which establishes the presence of massive lesions in the lung; or (3) a diagnosis, by means other than the previous two methods, of a condition which could reasonably be expected to yield the same result. Furthermore, all relevant evidence must be weighed prior to invocation; if the record contains evidence in more than one category, the various categories of evidence must be weighed against each other before the presumption can be invoked. *Eastern Assoc. Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 256, 22 BLR 2-93, 2-101 (4th Cir. 2000); *Melnick v. Consolidation Coal Corp.*, 16 BLR 1-31 (1992). The only method at issue in this case is x-ray evidence.

Carrier contends that the administrative law judge erred in relying on the interpretations of the x-rays dated August 10, 2000 and January 9, 2001 to find invocation of the irrebuttable presumption provided at 20 C.F.R. §718.304. Pertinent to this case, the x-ray dated August 10, 2000 was read as positive for complicated pneumoconiosis, “Stage B,” by “NIOSH approved physicians.” Director’s Exhibit 25. The x-ray dated January 9, 2001, the most recent of record, was read as positive for complicated pneumoconiosis, Category B, by Dr. Navani, a dually qualified physician, and by Dr. Ranavaya, a B-reader. Director’s Exhibits 28, 29. Dr. Renn, also a B-reader, saw a large opacity on this x-ray, but stated he could not determine whether complicated pneumoconiosis was present. Employer’s Exhibit 8. Drs. Wiot, Spitz, and Wheeler, dually qualified physicians, each noted a large mass, opining that it was not coal workers’ pneumoconiosis. Director’s Exhibits 44, 46; Employer’s Exhibit 5. Dr. Scott, a dually qualified physician, noted nodular infiltrates and read the January 9, 2001 x-ray as negative for pneumoconiosis. Employer’s Exhibit 5.

Carrier specifically argues that the administrative law judge erred in crediting Dr. Wagner’s reading of complicated pneumoconiosis on the August 10, 2000 x-ray as Dr. Wagner’s qualifications were not included in the record. Carrier’s contention lacks merit. The August 10, 2000 x-ray was actually read by “NIOSH approved physicians,” and Dr. Wagner reported their interpretations in a cover letter dated October 10, 2000. *See* Director’s Exhibit 25. The administrative law judge permissibly accepted this reading of the August 10, 2000 x-ray as it was uncontradicted. *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988).

With regard to the January 9, 2001 x-ray, carrier argues that the negative readings by Drs. Scott, Wiot, Spitz, and Wheeler outweigh the findings of complicated pneumoconiosis by Drs. Navani and Ranavaya, because of the numerical superiority of negative readings by dually qualified physicians. We disagree. As the Director notes, the administrative law judge provided an adequate basis for rejecting those opinions (the lack of corroborating evidence for their diagnoses). Moreover, the argument that the numerical superiority of x-ray readings must win, has been rejected. *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); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992).

Based on the foregoing, we affirm the administrative law judge's finding that the x-ray evidence of record is sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis provided at Section 718.304. Because carrier raises no further challenge to the administrative law judge's findings, we affirm his determination that claimant's pneumoconiosis arose out of coal mine employment pursuant to Section 718.203. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Accordingly, the administrative law judge's Decision and Order – Award of Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge