

BRB No. 05-0389 BLA

DONNIE RICE)
)
 Claimant-Petitioner)
)
 v.)
)
 SHAMROCK COAL COMPANY,)
 INCORPORATED, Self-Insured)
) DATE ISSUED: 09/16/2005
 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 – Denying Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

Sarah M. Hurley (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: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-5606) of Administrative Law Judge Thomas F. Phalen, Jr. 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). Claimant filed this initial claim for black lung benefits on April 3, 2001. Director's Exhibit 2. After accepting the parties' stipulation that claimant engaged in twenty-two years of coal mine employment, the administrative law judge found that the evidence failed to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1), (a)(4) and total disability under 718.204(b)(2)(iv). Claimant also argues that remand is required because the Department of Labor failed to provide him with a complete and credible pulmonary evaluation to substantiate his claim. In response, employer argues that the administrative law judge's denial of benefits is supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), responds that remand for a complete pulmonary evaluation is not warranted in this case.¹

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 applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718, claimant must establish 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. *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 718.202(a)(1), the administrative law judge reasonably found that the preponderance of the x-ray interpretations by the better qualified physicians was negative for the existence of pneumoconiosis. 20 C.F.R. §718.202(a)(1); Decision and Order – Denying of Benefits at 9; *see Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995). The record contains nine interpretations of five x-rays,

¹ The parties do not challenge the administrative law judge's decision to credit claimant with twenty-two years of coal mine employment, or his findings pursuant to 20 C.F.R. §§725.414(a)(3), and 718.202(a)(2)-(a)(3). We therefore affirm these findings as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

three of which received conflicting interpretations and two which were read only as negative. The administrative law judge considered that the July 30, 2001 x-ray was interpreted as positive by Dr. Simpao, who holds no special radiological qualifications, and negative by Dr. Poulous, a B reader and Board-certified radiologist. Decision and Order – Denying Benefits at 9; Director’s Exhibit 13; Employer’s Exhibit 16. In addition, the administrative law judge considered that the June 20, 2001 x-ray was read as positive by Dr. Baker, who lacked a B-reader credential at the time of the reading, but as negative by Dr. Wiot, a B reader and Board-certified radiologist. Decision and Order – Denying Benefits at 9; Director’s Exhibit 13; Employer’s Exhibit 6. The administrative law judge also found that the November 11, 2002 x-ray was interpreted as positive by Dr. Baker, who at the time was a B reader, but read as negative by Dr. Halbert, a dually qualified, B reader and Board-certified radiologist. Decision and Order – Denying Benefits at 9; Claimant’s Exhibits 1, 3; Employer’s Exhibit 4. Because the administrative law judge permissibly considered both the quality and the quantity of the x-ray evidence in finding that it did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), claimant’s arguments to the contrary lack merit. *See Staton*, 65 F.3d at 59-60, 19 BLR at 2-280. We therefore affirm the administrative law judge’s finding pursuant to Section 718.202(a)(1).

Pursuant to Section 718.202(a)(4), claimant contends that the administrative law judge provided an invalid reason for discounting Dr. Baker’s diagnosis of pneumoconiosis. We disagree. The administrative law judge acknowledged that Dr. Baker conducted a physical examination, recorded claimant’s work and smoking histories, and administered diagnostic tests, including an x-ray, a non-qualifying pulmonary function study that showed a mild obstruction, and a normal blood gas study. Decision and Order – Denying Benefits at 7. However, the administrative law judge permissibly found that Dr. Baker’s diagnosis of pneumoconiosis did not constitute a reasoned medical judgment because Dr. Baker gave no explanation for his diagnosis of coal workers’ pneumoconiosis other than a history of coal dust exposure and his own positive x-ray reading.² *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); Decision and Order – Denial of Benefits at 9-10; Director’s Exhibit 13. Claimant does not otherwise challenge the administrative law judge’s finding pursuant to 718.202(a)(4). It is therefore affirmed.

Claimant contends that because the administrative law judge “discredited” Dr. Simpao’s diagnosis of pneumoconiosis contained in his July 30, 2001 opinion provided

² The administrative law judge had found that Dr. Baker’s x-ray interpretation was countered by that of Dr. Wiot, who is “dually qualified.” Decision and Order – Denying Benefits at 9; Director’s Exhibit 13.

by the Department of Labor, “the Director has failed to provide the claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act.” Claimant’s Brief at 5. The Director responds that he is required “to provide the claimant with a complete and credible examination, not a dispositive one.” Director’s Brief at 3. The Director states that he met his statutory obligation because Dr. Simpao provided a credible diagnosis of pneumoconiosis. Director’s Brief at 4-5.

The Act requires that “[e]ach miner who files a claim...be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.” 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406. The issue of whether the Director has met this duty may arise where “the administrative law judge finds a medical opinion incomplete,” or where “the administrative law judge finds that the opinion, although complete, lacks credibility.” *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); *accord Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105(8th Cir. 1990); *Newman v. Director, OWCP*, 745 F. 2d 1162, 7 BLR 2-25, 2-31 (8th Cir. 1984).

The record reflects that Dr. Simpao conducted an examination and the full range of testing required by the regulations, and addressed each element of entitlement on the Department of Labor examination form. Director’s Exhibit 11; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). With respect to the issue of pneumoconiosis, the administrative law judge gave “less weight” to the opinion of Dr. Simpao, but he did not find it entitled to no weight. Decision and Order – Denying Benefits at 10; Director’s Exhibit 11. Specifically, the administrative law judge found that Dr. Simpao did “not fully explain what findings, and symptomology support the diagnosis [of pneumoconiosis] other than the positive x-ray.” *Id.* Moreover, the administrative law judge reasonably found that the negative opinions of Drs. Broudy and Dahhan were better supported by the objective evidence and therefore outweighed the opinions of Drs. Simpao and Baker. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order – Denying Benefits at 10; Director’s Exhibit 28, 33; Employer’s Exhibit 14. Because Dr. Simpao’s opinion was merely found outweighed on the issue of pneumoconiosis, there is no merit to claimant’s argument that the administrative law judge’s treatment of Dr. Simpao’s opinion establishes that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. 20 C.F.R. §725.406(a); *Hodges*, 18 BLR at 1-93.

Because we have affirmed the administrative law judge’s findings that the medical evidence did not establish the existence of pneumoconiosis pursuant to Section

718.202(a), we affirm the denial of benefits without reaching claimant's arguments concerning the administrative law judge's weighing of the evidence under Section 718.204(b)(2). *Trent*, 11 BLR at 1-27.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge