BRB Nos. 99-0752 BLA, 97-1067 BLA
and 95-0964 BLA

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| ROBERT J. DAMRON | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
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| WESTMORELAND COAL COMPANY) | | DATE ISSUED: |
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| Employer-Respondent | ) | |
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| 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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Roger D. Forman (Forman & Crane), Charleston, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (98-BLA-1034) of Administrative Law Judge Daniel L. Leland 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] The administrative law judge initially excluded from consideration,

[1] The instant appeal also consolidates the appeals of two prior denials issued in this case, *i.e.*, the Decision and Order Denying Benefits (94- BLA-0627), Director's Exhibit 45, and the Decision and Order Denying Modification (96-BLA-0845), Director's Exhibit 63 issued by Administrative Law Judge Richard E. Huddleston. Claimant initially filed a claim for benefits on March 25, 1993, which was denied by the district director on September 2,

the medical opinion of Dr. Chillag, Employer's Exhibit 8, as the opinion was of minimal probative value, was "mere surplusage," and was unnecessary for the resolution of the case. Decision and Order at 2-3. The administrative law judge law judge next reaffirmed the previous finding of thirty-nine years and eight months of coal mine employment. Decision and Order at 3-4. The administrative law judge concluded that the instant claim constituted a

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1993, Director's Exhibit 16, and then by Administrative Law Judge Huddleston because claimant failed to establish either pneumoconiosis or a totally disabling respiratory impairment. Director's Exhibit 45. Claimant filed an appeal with the Board, Director's Exhibit 46, but at the same time filed a request for modification. Director's Exhibit 48. The Board dismissed the appeal and remanded the claim for consideration of claimant's modification request. *Damron v. Westmoreland Coal Co.*, BRB No. 95-0964 BLA (Order)(May 26, 1995). Administrative Law Judge Huddleston eventually issued a Decision and Order Denying Modification, after concluding the evidence was again insufficient to establish pneumoconiosis and total disability. Director's Exhibit 63. Claimant appealed the denial of benefits to the Board, but again requested modification at the same time, Director's Exhibit 65. The Board dismissed claimant's appeal and remanded the claim to the district director for modification proceedings. *Damron v. Westmoreland Coal Co.*, BRB Nos. 97-1067 BLA and 95-0964 BLA (Order)(May 17, 1997)(unpub.). On March 30, 1999, the administrative law judge issued the Decision and Order Denying Benefits from which claimant now appeals. Claimant requested that the Board reinstate the two previous appeals, which was granted, *Damron v. Westmoreland Coal Co.*, BRB Nos. 99-0752 BLA, 97-1067 BLA and 95-0964 BLA (May 20, 1999).

request for modification pursuant to 20 C.F.R. §725.310 and that claimant had demonstrated a mistake in a prior determination of fact inasmuch as the evidence established the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). Decision and Order at 6-7. The administrative law judge further concluded that, based upon a review of the entirety of the relevant evidence of record, claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied.

On appeal, claimant asserts that employer has been unfairly allowed to "submit...high numbers of opinions and x-rays." Claimant's Brief at 4. Claimant also contends that the administrative law judge erroneously failed to evaluate the bias of those physicians retained by employer and, in so doing, erred in failing to credit the opinion of Dr. Rasmussen diagnosing the existence of pneumoconiosis. Employer, in response, urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this appeal.[2]

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

[2] We affirm, as unchallenged on appeal, the administrative law judge's determination that claimant has established a mistake in a determination of fact pursuant to Section 725.310, *see Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993), and that claimant established the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). We further affirm, as unchallenged, the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3). *Skrack, supra*.

Claimant asserts that it is unnecessary for employer to submit so many x-ray readings and that the sheer volume of such evidence is not probative. In finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), the administrative law judge, in a permissible exercise of discretion, found that the weight of the x-ray interpretations by the physicians with the dual qualifications of B-reader and board-certified radiologist,[3] was negative for the existence of pneumoconiosis. Inasmuch as the administrative law judge has relied on qualitative factors in his review of the x-ray evidence and concluded that the weight of such evidence fails to establish the existence of pneumoconiosis, we affirm the determination that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1). *See 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); *see also Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993).

Furthermore, in any case, claimant has failed to allege any specific error in the administrative law judge's findings or to brief allegations in terms of relevant law with regard to the administrative law judge's specific findings pursuant to Section 718.202(a)(1). It is well established that the Board will decline to review an administrative law judge's Decision and Order where petitioner fails to allege any specific error or sufficiently brief allegations respecting law and evidence. *See 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

[3] A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16 , 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). A board-certified radiologist is a physician who has been certified by the American Board of Radiology as having a particular expertise in the field of radiology. While the administrative law judge erroneously concluded that Dr. Goldstein was a dually-qualified physician, we hold that the error was harmless, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), in view of Dr. Goldstein's negative reading and the administrative law judge's proper weighing of the rest of the x-ray evidence, *see 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). The record contains a total of fourteen interpretations by readers with these dual qualifications. Of these fourteen, twelve were read negative for the existence of pneumoconiosis, Director's Exhibits 14, 16-18, 34, 35, and two were read positive, Director's Exhibit 12; Claimant's Exhibit 4.

F.2d 445, 9 BLR 2-46 (6th Cir. 1986). We, therefore, have no substantial issue to review with regard to the medical evidence at Section 718.202(a)(1), *see Sarf, supra*; *Fish, supra, see also Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983), and must hold that the administrative law judge properly addressed relevant evidence of record in finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1). *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *see also Stark v. Director, OWCP*, 9 BLR 1-36 (1989).

Claimant further contends that the administrative law judge erred in failing to find the existence of pneumoconiosis established at Section 718.202(a)(4) as the administrative law judge failed to address bias on the part of the physicians retained by employer and that the administrative law judge improperly discredited the opinion of Dr. Rasmussen, who found that claimant suffered from an obstructive lung defect arising out of coal mine dust exposure, Claimant's Exhibit 1. Finally, claimant contends that the administrative law judge improperly accorded greater weight to the opinions of Drs. Loudon, Crisalli and Castle, all of whom concluded that claimant suffered from no disease arising out of coal mine employment, Director's Exhibits 40, 41; Employer's Exhibits 2-4, 6-8.

In finding that the medical opinion evidence failed to establish the existence of pneumoconiosis, the administrative law judge considered the entirety of such evidence and found that the medical opinions of Dr. Treharne, Dr. Ranavaya, the West Virginia Occupational Pneumoconiosis Board, Director's Exhibit 65 as well as the opinion of Dr. Rasmussen diagnosed the presence of legal pneumoconiosis. Decision and Order at 7-8. The administrative law judge further found that the opinions of Drs. Crisalli, Loudon and Castle all supported the contrary conclusion, *i.e.*, that claimant did not suffer from pneumoconiosis.

The administrative law judge, in a permissible exercise of his discretion, accorded little weight to Dr. Treharne's conclusion inasmuch as the physician's conclusion that claimant "most likely" suffered from a coal mine employment related condition, rendered the opinion equivocal and therefore less credible. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985). Further, the administrative law judge, in a permissible exercise of his discretion, accorded little weight to the conclusions of Dr. Ranavaya and the West Virginia Occupational Pneumoconiosis Board as the opinions failed to explain the nexus between claimant's coal mine employment and his disease. *See York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Cooper v. United States Steel Corp.*, 7 BLR 1-842 (1985); *White v. Director, OWCP*, 6 BLR 1-368, 1-371 (1983). In crediting their opinions over those of Dr. Rasmussen the administrative law judge permissibly accorded greatest weight to the conclusions of Drs. Crisalli, Loudon and Castle, based on their superior credentials as pulmonary specialists. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir.

1997). Likewise, the administrative law judge permissibly accorded greater weight to the conclusions of Dr. Castle who consistently opined that claimant did not demonstrate a disease arising out of coal mine employment, Employer's Exhibits 2, 8, as he presented a particularly well-reasoned medical opinion. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Finally, contrary to claimant's general assertion, the mere fact that a physician is retained by employer does not by itself give rise to a presumption of that physician's bias. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-131 (1991)(*en banc*). Accordingly, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Ondecko, supra*. Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we must affirm the denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge