

BRB No. 99-0779 BLA

ELDON JONES)
)
 Claimant-Petitioner)
)
 v.)
)
 DIXIE FUEL COMPANY) DATE ISSUED:
)
 and)
)
 OLD REPUBLIC INSURANCE COMPANY)
)
 Employer/Carrier)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS') DECISION and ORDER
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

Appeal of the Decision and Order-Denial of Benefits of Robert L. Hillyard,
Administrative Law Judge, United States Department of Labor.

Eldon Jones, Cawood, Kentucky, *pro se*.

Amy E. Wilmot (Arter & Hadden), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative
Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order-Denial of Benefits (98-BLA-0339) of Administrative Law Judge Robert L. Hillyard denying claimant's request for modification and benefits 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 found that there was no mistake in the prior

¹ Claimant filed the instant claim on February 25, 1994, Director's Exhibit 1. After

determination that claimant had established a coal mine employment history of thirty-nine years. Decision and Order at 4. The administrative law judge further concluded that the instant claim constituted a request for modification pursuant to 20 C.F.R. §725.310 and that a review of the entirety of the evidence of record, *i.e.*, that evidence previously considered and the evidence submitted in conjunction with claimant's request for modification, failed to establish a change in conditions or a mistake in a determination of fact inasmuch as the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). Decision and Order at 9-11. Accordingly, benefits were denied. Employer, in response, urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-361 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by

the claim was denied by district director, Director's Exhibits 30, 39, the administrative law judge issued a Decision and Order denying benefits on the basis of claimant failing to establish the existence of pneumoconiosis or a totally disabling respiratory impairment. Claimant appealed the denial of benefits, but at the same time submitted a request seeking modification of the denial of benefits, Director's Exhibits 45, 49. The Board issued an Order dismissing claimant's appeal and remanded the claim to the district director for consideration of claimant's request for modification. *Jones v. Dixie Fuel Co.*, BRB No. 97-0793 BLA (Order)(Jul. 2, 1997). Director's Exhibit 50. Subsequently, the district director denied claimant's request, Director's Exhibit 52. After a hearing, the administrative law judge, on March 25, 1999, issued the Decision and Order denying modification and benefits from which claimant now appeals.

substantial evidence, and 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).

In finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), the administrative law judge considered the entirety of the x-ray evidence of record and permissibly accorded greatest weight to the readings by physicians with the superior credentials of B-reader and/or board-certified radiologist,² the majority of whose interpretations were negative for the existence of pneumoconiosis. Director's Exhibits 19, 20, 23 25-29; see *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); see also *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). Accordingly, we affirm the administrative law judge's determination that the weight of the evidence of record failed to support a finding of pneumoconiosis pursuant to Section 718.202(a)(1). See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 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).

We further hold that claimant is precluded from establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (3) as the record is devoid of autopsy or biopsy evidence and there is no evidence of complicated pneumoconiosis in this living miner's claim filed subsequent to January 1, 1982. Director's Exhibit 1; 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306.

²A "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.

In finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge considered the entirety of the relevant evidence and, in a permissible exercise of his discretion, accorded greatest weight to the Dr. Dahhan, who found that claimant did not suffer from pneumoconiosis, Director's Exhibit 15, as the physician's opinion was well-supported by the underlying documentation and constituted the best explained opinion of record. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.* 8 BLR 1-46 (1985). Further, in concluding that the medical opinion evidence failed to support a finding of the existence of pneumoconiosis at Section 718.202(a)(4), the administrative law judge permissibly accorded less weight to the opinions of Drs. Baker, Lane, Estes and Bushey, all of whom diagnosed the presence of pneumoconiosis, Director's Exhibits 22, 45, as the opinions were not well-supported by the underlying documentation and poorly explained in light of the evidence relied upon. *See Clark, supra*; *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). Accordingly, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Ondecko, supra*.

Finally, the administrative law judge concluded that the entirety of relevant evidence of record failed to support a finding of total disability pursuant to Section 718.204(c). We agree. A review of the record shows that, pursuant to Section 718.204(c)(1), (2), there is no qualifying pulmonary function study or blood gas study evidence,³ Director's Exhibits 11-13, 17, 18, 41, and there is no evidence of cor pulmonale with right-sided congestive heart failure, pursuant to Section 718.204(c)(3), *see Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); *rev'd on other grounds*, 933 F.2d 510 15 BLR 2-124 (7th Cir. 1991). Finally, the medical opinion evidence of record provides no opinion sufficient to allow a finding of total disability pursuant to Section 718.204(c)(4).⁴ Director's Exhibits 15, 16, 41,

³A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. §718.204, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

⁴Dr. Clarke relies upon his x-ray finding of pneumoconiosis, Director's Exhibit 45, to state that claimant is totally disabled from coal mine employment. Dr. Clarke provides no other support for this conclusion other than the x-ray which is medical evidence used only to determine the presence or absence of a disease and is not diagnostic of the extent of respiratory disability. *See Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987); *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983). Accordingly, Dr. Clarke's conclusion is not a relevant medical opinion pursuant to Section 718.204(c)(4). *See Fields v. Island Creek Coal*

45. See *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986) *aff'd on recon.*, 9 BLR 1-104 (1986)(*en banc*); see also *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986). Accordingly, we affirm the administrative law judge's finding that claimant has failed to establish a totally disabling respiratory impairment pursuant to Section 718.204(c). See *Ondecko, supra*; *Gee, supra*. Claimant has failed to establish both the existence of pneumoconiosis and a totally disabling respiratory impairment and is thus precluded from establishing entitlement to benefits. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). We must therefore affirm the administrative law judge's denial of modification and benefits. See *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); see also *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge