

BRB No. 05-0894 BLA

THOMAS MAGGARD)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 04/28/2006
)	
BLEDSOE DEEP MINING COMPANY)	
)	
and)	
)	
KENTUCKY COAL PRODUCERS')	
SELF-INSURED FUND)	
)	
Employer/Carrier-)	
Respondents)	
)	
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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

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

David H. Neeley (Neeley Law Office, P.S.C.), Prestonburg, Kentucky, for employer.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-6482) of Administrative Law Judge Pamela Lakes Wood rendered 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 his application for benefits on December 4, 2001. Director's Exhibit 2. The administrative law judge found that claimant was not employed for a full year by the designated responsible operator, Bledsoe Deep Mining Company, and he therefore dismissed employer. The administrative law judge credited claimant with five years of coal mine employment and found that claimant failed to established the existence of pneumoconiosis under 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied benefits.

On appeal, claimant alleges that the administrative law judge erred in the evaluation of the x-ray evidence and in finding that claimant was not totally disabled. Claimant further argues that Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete and credible pulmonary evaluation pursuant to 20 C.F.R. §725.406. Employer responds, urging affirmance of the denial of benefits. In response, the Director does not challenge the dismissal of employer as the responsible operator, but he moves to remand this case to the district director for further evidentiary development on behalf of claimant. In support of this motion, the Director states that he has failed to fulfill his statutory duty, pursuant to Section 413(b), 30 U.S.C. 923(b), to provide claimant with a complete pulmonary evaluation.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 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 in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements

¹ The administrative law judge's length of coal mine employment determination, her dismissal of employer as the responsible operator, and her findings pursuant to 20 C.F.R. §718.202(a)(2)(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, BLR 6 BLR 1-710 (1983). Because the administrative law judge did not reach the issue of total disability, we will not address claimant's arguments regarding total disability.

precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to Section 718.202(a)(1), the administrative law judge correctly found that there were no positive x-ray readings for the existence of pneumoconiosis. Decision and Order at 3, 13; Director's Exhibits 8, 9; Employer's Exhibit 1. The administrative law judge further found that although Dr. Baker noted some opacities consistent with pneumoconiosis on his reading of the January 11, 2002 x-ray, he classified them as "0/1" profusion, which does not qualify as evidence of pneumoconiosis under the regulations. 20 C.F.R. §718.102(b). Because the administrative law judge properly found that there were no positive x-ray readings, we reject claimant's arguments that the administrative law judge improperly relied on the readers' radiological credentials and the numerical superiority of the x-ray interpretations. Claimant's Brief at 3. We therefore affirm the administrative law judge's finding pursuant to Section 718.202(a)(1).

Pursuant to Section 718.202(a)(4), the administrative law judge found that the reasoned and documented medical opinion evidence did not establish the existence of pneumoconiosis. The administrative law judge discounted Dr. Baker's opinion provided to claimant by the Department of Labor, finding Dr. Baker's opinion diagnosing pneumoconiosis to be equivocal, inconsistent, and "unreasoned." Decision and Order at 14. Claimant does not challenge the administrative law judge's finding pursuant to Section 718.202(a)(4). It is therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *see also Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

Claimant contends that the Director failed to provide him with a complete and credible pulmonary evaluation with Dr. Baker's opinion. Claimant's Brief at 3. The Director agrees, interpreting the administrative law judge's "assessment of Dr. Baker's opinion as a finding that it is entitled to no weight whatsoever." Director's Brief at 2. Consequently, the Director requests that the case be remanded "to the district director in order for the Director to fulfill his obligation to provide [claimant] with a complete and credible examination." *Id.* We grant the Director's motion to remand this case to the district director, based on the Director's concession that Dr. Baker's opinion fails to meet the Director's obligation of providing claimant with a complete pulmonary evaluation sufficient to substantiate his claim. *See Hodges v. BethEnergy Mines Inc.*, 18 BLR 1-84, 1-93 (1994)(granting Director's motion to remand for a complete pulmonary evaluation); *Petry v. Director, OWCP*, 14 BLR 1-98, 1-100 (1990)(*en banc*)(same); *Hall v. Director, OWCP*, 14 BLR 1-51, 1-53 (1990)(*en banc*)(same).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded to the district director for further proceedings consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge