

BRB No. 06-0768 BLA

TOMMY ADAMS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BLEDSOE COAL COMPANY)	
c/o JAMES RIVER COAL COMPANY)	DATE ISSUED: 04/11/2007
)	
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 – Denial of Benefits of Larry S. Merck, Administrative law Judge, United States Department of Labor.

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

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

Helen H. Cox (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, 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, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denial of Benefits (04-BLA-5552) of Administrative Law Judge Larry S. Merck 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 claim for benefits on

March 1, 2001. Director's Exhibit 1. The administrative law judge credited claimant with eleven years of coal mine employment¹ pursuant to the parties' stipulation. Decision and Order at 4. Based on the date of filing, the administrative law judge found that the evidence did not establish the existence of pneumoconiosis or a totally disabling pulmonary or respiratory impairment pursuant to 20 C.F.R. §§718.202(a), 718.204(b). The administrative law judge also found, *assuming arguendo* that the evidence established the existence of pneumoconiosis, that the evidence does not establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1),² and total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant also contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete and credible pulmonary evaluation to substantiate his claim. Employer responds, urging affirmance of the denial of benefits. The Director responds that he met his obligation to provide claimant with a complete and credible pulmonary evaluation.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence 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 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).

¹ The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 1. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

² Because claimant does not challenge the administrative law judge's findings that the existence of pneumoconiosis was not established at 20 C.F.R. §718.202(a)(2), (3), and (4), we affirm them. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered seven readings of four x-rays. Dr. Hussain, a physician with no special radiological qualifications, read the July 11, 2001 x-ray as positive for pneumoconiosis. Director's Exhibit 1. The administrative law judge noted, however, that Dr. Wiot, a Board-certified radiologist and B reader, read the same x-ray as negative for pneumoconiosis. Employer's Exhibit 5. Based on Dr. Wiot's superior qualifications, the administrative law judge found the July 11, 2001³ x-ray negative for pneumoconiosis. The administrative law judge also noted that Dr. Rosenberg, a B reader, read the August 15, 2001 x-ray and the August 29, 2003 x-ray as negative for pneumoconiosis. Employer's Exhibit 1. Since there were no contrary readings of these two x-rays, the administrative law judge found both x-rays negative for pneumoconiosis. Finally, the administrative law judge considered that Dr. Simpao, a physician with no special radiological qualifications, read the September 12, 2003⁴ x-ray as positive for pneumoconiosis, and that Dr. Halbert, a Board-certified radiologist, read the same x-ray as negative for pneumoconiosis. Director's Exhibit 13; Employer's Exhibit 6. Based on Dr. Halbert's superior qualifications, the administrative law judge found the x-ray negative for pneumoconiosis. Because "all four x-rays were interpreted as negative by highly qualified physicians," the administrative law judge found that the x-ray evidence failed to establish the existence of pneumoconiosis. Decision and Order at 7.

The administrative law judge based his finding on a proper qualitative analysis of the x-ray evidence. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004). Consequently, claimant's arguments that the administrative law judge improperly relied on the readers' credentials, merely counted the negative readings, and "may have 'selectively analyzed'" the readings, lack merit. Claimant's Brief at 3. We therefore affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Claimant further contends that he is entitled to a remand of the case for the Director to provide him with a complete and credible pulmonary evaluation, because the administrative law judge "discredited the opinion of Dr. Simpao because said physician relied upon an erroneous x-ray interpretation and upon non-qualifying pulmonary function study and arterial blood gas report results." Claimant's Brief at 4. The Director

³ Dr. Sargent read the July 11, 2001 x-ray for quality purposes only. Director's Exhibit 1.

⁴ Dr. Barrett read the September 12, 2003 x-ray for quality purposes only. Director's Exhibit 13.

responds that the “mere fact that the [administrative law judge] found Dr. Simpao’s positive x-ray reading outweighed by a more qualified reader’s negative interpretation of the same x-ray does not mean that the Director failed to satisfy his statutory obligation.” Director’s Brief at 2.

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), as 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, 1166, 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. 20 C.F.R. §§718.101(a), 718.104, 725.406(a); Director’s Exhibit 13. Dr. Simpao diagnosed “CWP 1/1” and opined that “multiple years of coal dust exposure is medically significant in [claimant’s] pulmonary impairment.” Director’s Exhibit 13. The administrative law judge found Dr. Simpao’s diagnosis of clinical pneumoconiosis was based on a positive x-ray reading that the administrative law judge found outweighed by the negative reading of that x-ray by a physician with superior radiological credentials. Decision and Order at 11. The administrative law judge also noted that Dr. Simpao relied on a non-qualifying pulmonary function study and blood gas study, and found that Dr. Simpao failed to “clearly explain how his physical findings and symptomatology were supportive of a finding of pneumoconiosis.” *Id.* Additionally, the administrative law judge chose to give greater weight to the better reasoned and better documented opinions of Drs Rosenberg and Dahhan, that claimant does not suffer from pneumoconiosis. *Id.*; *see Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999)(explaining that “[administrative law judges] may evaluate the relative merits of conflicting physicians’ opinions and choose to credit one . . . over the other”); Decision and Order at 11. Because the administrative law judge merely found Dr. Simpao’s opinion outweighed on the issue of the existence of pneumoconiosis, there is no merit to claimant’s argument that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. *Cf. Hodges*, 18 BLR at 1-93.

Because claimant failed to establish the existence of pneumoconiosis, a necessary element of entitlement in a miner’s claim under Part 718, we affirm the administrative law judge’s denial of benefits. *Anderson*, 12 BLR at 1-112; *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*). Consequently, we need not address claimant’s arguments

concerning the administrative law judge's finding that claimant did not establish that he is totally disabled.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge