

BRB No. 06-0805 BLA

JERRY FARMER)
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 Claimant-Petitioner)
)
 v.)
)
 NORTH STAR MINING, INCORPORATED) DATE ISSUED: 04/30/2007
)
 and)
)
 ANESTHESIOLOGIST PROFESSIONAL)
 ASSURANCE)
)
 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 Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

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

William E. Brown, II (Pohl, Kiser & Aubrey, P.S.C.), Lexington, Kentucky, for employer and carrier.

Jeffrey S. Goldberg (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 Denying Benefits (2005-BLA-05427) of Administrative Law Judge Adele Higgins Odegard 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). The administrative law judge accepted the stipulation of the parties that claimant had twenty years of qualifying coal mine employment, as supported by the record, and adjudicated this claim, filed on December 17, 2002, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the evidence was insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), (c). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's weighing of the evidence in finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1), or total respiratory disability at Section 718.204(b).¹ Claimant alternatively asserts that the Director, Office of Workers' Compensation Programs (the Director), failed to provide claimant with a complete, credible pulmonary evaluation as required pursuant to Section 413 of the Act, 30 U.S.C. §923(b) as implemented by 20 C.F.R. §725.406(a), because the administrative law judge discounted the opinion of Dr. Simpao. Employer responds, urging affirmance of the denial of benefits. The Director has filed a limited response, urging the Board to reject claimant's argument that the Director failed to provide claimant with a pulmonary examination that complies with the requirements of Section 413(b) of the Act.²

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.³ 33 U.S.C. §921(b)(3), as incorporated by 30

¹ Although claimant refers to the provisions at 20 C.F.R. §718.204(c), *see* Claimant's Brief at 4-5, under the amended regulations, total respiratory or pulmonary disability is established pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv).

² We affirm, as unchallenged on appeal, the administrative law judge's finding with regard to the length of claimant's coal mine employment and his finding that the evidence of record did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4). *See Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mine industry in the Commonwealth of Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

U.S.C. §932(a); *O’Keeffe 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 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Claimant initially challenges the administrative law judge’s weighing of the x-ray evidence of record at Section 718.202(a)(1), arguing that the administrative law judge “relied almost solely on the qualifications of the physicians providing the x-ray interpretations,” “placed substantial weight on the numerical superiority of x-ray interpretations,” and “may have ‘selectively analyzed’” the evidence. Claimant’s Brief at 3. Contrary to claimant’s arguments, however, we can discern no error in the administrative law judge’s weighing of this evidence. The administrative law judge accurately determined that the film dated July 22, 2003 was read as positive by a physician with no special radiological qualifications and reread as negative by a dually-qualified Board-certified radiologist and B reader, while the film dated November 14, 2003 was interpreted as negative, without contradiction, by a B reader. Decision and Order at 7-8; Director’s Exhibits 13, 34, 42. Based on the preponderance of negative interpretations by the better qualified readers, the administrative law judge acted within her discretion in finding that the evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1). Decision and Order at 8; *see Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1 (2004). The administrative law judge’s findings are supported by substantial evidence, and thus are affirmed.

Claimant does not challenge the administrative law judge’s finding that the remaining evidence of record is insufficient to establish the existence of pneumoconiosis. Instead, claimant argues that the Director violated his statutory duty to provide claimant with a complete and credible pulmonary evaluation sufficient to substantiate his claim because the administrative law judge determined that Dr. Simpao did not specify the basis for his conclusion that claimant had a moderate pulmonary impairment or state whether this impairment would prevent claimant from performing his usual coal mine employment. Claimant’s Brief at 4. Claimant’s argument is without merit.

On its face, Dr. Simpao’s opinion is complete, as the physician conducted a physical examination, recorded claimant’s symptoms as well as his employment, medical and social histories, obtained x-rays, an electrocardiogram, pulmonary function and blood

gas studies, and addressed all the elements of entitlement. Decision and Order at 4-5; Director's Exhibit 13. In evaluating the conflicting opinions of Drs. Dahhan and Simpao on the issue of the existence of pneumoconiosis, the administrative law judge determined that both were well-reasoned and documented, but that the opinion of Dr. Dahhan was entitled to greater weight because the physician explained how the results of the tests he conducted supported his medical conclusion that claimant did not suffer from pneumoconiosis. Decision and Order at 9-10; Director's Exhibit 42. The administrative law judge acted within her discretion in according less weight to the opinion of Dr. Simpao because the physician did not address the effects of claimant's medications or specify how the test results he obtained led him to his medical determination that "multiple years of coal dust exposure is medically significant in [the miner's] pulmonary impairment," Director's Exhibit 13 at 5. Decision and Order at 9-10; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Thus, as the Director argues, in these circumstances, where the physician's pulmonary evaluation was complete, documented, and credible, but his diagnosis of pneumoconiosis was found to be outweighed by the conflicting evidence of record, the Director's statutory obligation is discharged. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.406(a); *see generally Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

Because claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the administrative law judge's denial of benefits. *See Anderson*, 12 BLR at 1-112. Consequently, we need not reach claimant's arguments on the issue of total respiratory disability.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge