BRB No. 06-0901 BLA

CHARLIE WOODS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
COASTAL COAL COMPANY	)	DATE ISSUED: 04/27/2007
	)	
and	)	
	)	
ANR COAL COMPANY	)	
	)	
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 Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

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

Rita Roppolo (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 (2004-BLA-5744) of Administrative Law Judge Daniel A. Sarno Jr., 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 parties stipulated to, and the administrative law judge

found, a coal mine employment of at least thirty years, but the administrative law judge further found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).[1] Claimant also argues that the administrative law judge erred in finding that claimant was not totally disabled. Claimant further contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide claimant with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim. Employer has not filed a brief in this appeal. The Director has filed a limited response, requesting that the Board reject claimant's request that the case be remanded based upon the Director's failure to provide claimant with a complete, 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant asserts that the administrative law judge erred in finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis. Claimant specifically contends that the administrative law judge improperly relied on the qualifications of the physicians interpreting the x-rays as negative and the numerical superiority of the negative x-ray interpretations. The x-ray evidence consisted of the interpretations of x-rays taken on January 14, 2003, and May 22, 2003. Although Dr. Simpao, a reader without any special radiological qualifications, interpreted the January 14, 2003 x-ray as positive for pneumoconiosis, Director's Exhibit 6, Dr. Wiot, a B reader and Board-certified radiologist,[2] interpreted the x-ray as negative for the disease,

[1] Because claimant does not challenge the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] 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 Co., Inc. of Va. v. Director,*

Director's Exhibit 24.[3] The May 22, 2003 was read as negative by Dr. Jarboe, a B reader, Director's Exhibit 21, and negative by Dr. Wiot, a B reader and Board-certified radiologist. Employer's Exhibit 1.

Considering this evidence, the administrative law judge found that the x-ray evidence failed to affirmatively establish the existence of pneumoconiosis because the preponderance of the x-ray readings by physicians with superior qualifications was negative for the disease. Decision and Order at 4-5, 8. This was rational. 20 C.F.R. §§718.102(c), 718.202(a)(1);[4] *Staton v. Norfolk & Western Railway 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); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).[5] Claimant's contention that the administrative law judge "may have selectively analyzed" the x-ray evidence is rejected as claimant points to no evidence, or finding by the administrative law judge, that supports this contention. *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004). Accordingly, the administrative law judge's finding that the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) is affirmed.

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.

[3] Dr. Barrett interpreted the January 14, 2003 x-ray for quality purposes only. Director's Exhibit 8; Decision and Order at 4.

[4] Section 718.202(a)(1) provides in pertinent part:

> where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration **shall** be given to the radiological qualifications of the physicians interpreting such X-rays.

20 C.F.R. §718.202(a)(1)(emphasis added).

[5] 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 Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 3.

Claimant also contends that, since the administrative law judge found Dr. Simpao's opinion unreasoned, the Director failed to provide him with a complete, credible pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required by the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *see Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Pettry v. Director, OWCP*, 14 BLR 1-98 (1990) (*en banc*); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). In response, however, the Director contends that he is only required to provide claimant with a complete, credible pulmonary evaluation, not a dispositive one. The Director contends that since Dr. Simpao addressed and found the existence of pneumoconiosis,[6] the fact that the administrative law judge found the opinion outweighed by the better reasoned opinion of Dr. Jarboe, did not mean that the Director failed to provide claimant with a sufficient evaluation.

In finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge accorded greater weight to the opinion of Dr. Jarboe as he found it more consistent with the credible, objective clinical tests than was the opinion of Dr. Simpao.[7] This was rational. *See* Decision and Order at 8; *Clark*, 12 BLR at 1-155; *Winters v. Director, OWCP*, 6 BLR 1-876, 1-881 n.4 (1983). Under these circumstances, therefore, we agree with the Director that claimant was provided with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim, and reject claimant's assertion that remand of this case for a complete, credible pulmonary evaluation is necessary. 30 U.S.C. §923(b); *see Barnes v. ICO Corp.*, 31 F.3d 673, 18 BLR 2-319 (8th Cir. 1994); *Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990).

[6] Dr. Simpao examined claimant on January 14, 2003, diagnosing the existence of coal workers' pneumoconiosis. Dr. Simpao recorded claimant's symptoms, as well as his employment, medical and social histories, and, in addition to an x-ray and physical examination, conducted an electrocardiogram, pulmonary function study and arterial blood gas study. In his medical report, Dr. Simpao addressed all of the elements of entitlement. Director's Exhibit 7.

[7] The administrative law judge found Dr. Jarboe's opinion better reasoned as Dr. Jarboe provided an analysis of the relevant evidence in his deposition testimony and his opinion was more consistent with the credible, objective clinical tests, including negative x-ray evidence, non-qualifying pulmonary function studies and non-qualifying blood gas studies. The administrative law judge found Dr. Simpao's opinion not to be as well-reasoned because Dr. Simpao did not specify the rationale for his opinion and relied on his positive x-ray interpretation which was subsequently reread negative. Decision and Order at 8.

In light of our affirmance of the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the evidence is insufficient to establish total respiratory disability at 20 C.F.R. §718.204(b).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge