

BRB No. 03-0847 BLA

PAUL FIELDS )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 SHAMROCK COAL COMPANY, ) DATE ISSUED: 08/11/2004  
 INCORPORATED )  
 )  
 and )  
 )  
 SUN COAL COMPANY, c/o )  
 ACCORDIA EMPLOYERS SERVICE )  
 )  
 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 of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmund Collett, P.S.C.), Hyden, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (02-BLA-5173) of Administrative Law Judge Rudolf L. Jansen denying 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).<sup>1</sup> This case involves a claim filed on February 12, 2001. After crediting claimant with eight and one-half years of coal mine employment, the administrative law judge found that the evidence was insufficient to establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence was insufficient to establish total disability 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 evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also argues that the administrative law judge erred in finding the medical opinion evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.<sup>2</sup>

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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 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). The record contains four interpretations of three x-rays. Dr. Baker, a physician with no special radiological qualifications, interpreted claimant's March 10, 2001 x-ray as positive for pneumoconiosis. Director's Exhibit 21. Dr. Hussain, a physician with no special radiological qualifications, interpreted claimant's May 16, 2001 x-ray as negative for pneumoconiosis.<sup>3</sup> Director's Exhibit 16. Dr. Dahhan, a B reader, and Dr. Wheeler, a physician dually qualified as a B reader and Board-certified

---

<sup>1</sup> The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>2</sup> Since no party challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(2) and (a)(3) and 718.204(b)(2)(i)-(iii), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>3</sup> Dr. Sargent, a physician dually qualified as a B reader and Board-certified radiologist, reread claimant's May 16, 2001 x-ray for quality only, assigning the film a quality of 3. Director's Exhibit 17.

radiologist, interpreted claimant's June 14, 2001 x-ray as negative for pneumoconiosis. Director's Exhibits 18, 19.

In his consideration of the x-ray evidence, the administrative law judge noted that an x-ray interpretation rendered by a B reader can be accorded greater weight. *See Vance v. Eastern Associated Coal Corp.*, 8 BLR 1-68 (1985); Decision and Order at 9. The administrative law judge also noted that the x-ray interpretation rendered by a physician dually qualified as a B reader and Board-certified radiologist can be found entitled to greater weight than an interpretation rendered by a physician qualified as only a B reader. *See Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 9-10. The administrative law judge properly found that all of the x-ray readings rendered by the best qualified physicians (*i.e.*, physicians qualified as B readers and/or Board-certified radiologists) are negative for pneumoconiosis. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Claimant also contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge credited the opinions of Drs. Dahhan, Fino and Hussain, that claimant does not suffer from pneumoconiosis, Director's Exhibits 16, 18; Employer's Exhibits 1, 3, over Dr. Baker's contrary opinion. Decision and Order at 10-11; Director's Exhibit 21.

The administrative law judge permissibly discredited Dr. Baker's diagnosis of coal workers' pneumoconiosis because he found that it was not sufficiently reasoned, noting that the diagnosis was based only on a positive x-ray interpretation and a history of coal dust exposure. *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); Decision and Order at 10. The administrative law judge also properly discredited Dr. Baker's diagnosis of chronic bronchitis because the doctor failed to provide any basis for his conclusion. *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); Decision and Order at 11.

Claimant contends that the administrative law judge erred in failing to accord greater weight to Dr. Baker's opinion based upon his status as claimant's treating physician. We disagree. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that there is no rule requiring deference to the opinion of a treating physician in black lung claims.<sup>4</sup> *Eastover Mining Co. v. Williams*,

---

<sup>4</sup> Revised Section 718.104(d) provides that an adjudicator must give consideration to the relationship between the miner and any treating physician whose report is admitted

338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). The Sixth Circuit has held that the opinions of treating physicians should be given the deference they deserve based upon their power to persuade. *Id.* The Sixth Circuit explained that the case law and applicable regulatory scheme clearly provide that the administrative law judge must evaluate treating physicians just as they consider other experts. *Id.* As discussed, *supra*, the administrative law judge properly accorded less weight to Dr. Baker's opinion that claimant suffered from pneumoconiosis because he found that his diagnosis was not sufficiently reasoned. *Worhach, supra*; Decision and Order at 10-11.

The administrative law judge also permissibly accorded greater weight to the opinions of Drs. Dahhan, Fino and Hussain, that claimant did not suffer from pneumoconiosis, based upon their superior qualifications.<sup>5</sup> *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 11; Director's Exhibits 16, 18; Employer's Exhibit 1. The administrative law judge also properly found that their opinions were well reasoned and well documented. *See Clark, supra*; *Lucostic, supra*; Decision and Order at 11. Because it is based upon substantial evidence, the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) is affirmed.

Claimant also argues that the administrative law judge erred in finding the medical opinion evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant specifically contends that the administrative law judge erred in finding Dr. Baker's opinion insufficient to establish total disability. Dr. Baker opined that because persons who develop pneumoconiosis should limit their further exposure to coal dust, it could be implied that claimant was 100% occupationally disabled for work in the coal mining industry. Director's Exhibit 21. Because a doctor's recommendation against further coal dust exposure is insufficient to establish a totally disabling respiratory impairment, *see Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989), the administrative law judge permissibly found that

---

into the record. 20 C.F.R. §718.104(d). The Sixth Circuit has recognized that this provision codifies judicial precedent and does not work a substantive change in the law. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002).

<sup>5</sup> Drs. Dahhan and Fino are Board-certified in Internal Medicine and Pulmonary Disease. Director's Exhibit 18; Employer's Exhibit 1. Although Dr. Hussain's qualifications are not found in the record, the administrative law judge found that Dr. Hussain was Board-certified in Internal Medicine and Pulmonary Disease. Decision and Order at 8. Because no party challenges the administrative law judge's characterization of Dr. Hussain's qualifications, this finding is affirmed. *Skrack, supra*. Dr. Baker's qualifications are not found in the record.

this aspect of Dr. Baker's opinion was insufficient to support a finding of total disability. Decision and Order at 12.

Dr. Baker also opined that:

Patient has a Class I impairment based on Table 5-12, Page 107, Chapter Five, Guides to the Evaluation of Permanent Impairment, Fifth Edition, based on the FEV1 and vital capacity both being greater than 80% of predicted.

Director's Exhibit 21.

Because Dr. Baker failed to explain the severity of such a diagnosis or to address whether such an impairment would prevent claimant from performing his usual coal mine employment, Dr. Baker's finding of a Class I impairment is insufficient to support a finding of total disability. The administrative law judge further properly found that Drs. Dahhan, Fino and Hussain opined that claimant retained the respiratory capacity to perform his usual coal mine employment.<sup>6</sup> Decision and Order at 12. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).<sup>7</sup>

---

<sup>6</sup> In a report dated June 18, 2001, Dr. Dahhan opined that there were no objective findings to indicate any pulmonary impairment and/or disability. Director's Exhibit 18. Dr. Dahhan opined that from a respiratory standpoint, claimant retained the physiological capacity to continue his previous coal mining work. *Id.* Dr. Dahhan reiterated his findings during a February 27, 2003 deposition. Employer's Exhibit 3.

In a report dated June 18, 2001, Dr. Fino opined that there was no respiratory impairment. Employer's Exhibit 1. Dr. Fino further opined that from a respiratory standpoint, claimant was neither partially nor totally disabled from returning to his last coal mining job. *Id.*

In a report dated May 16, 2001, Dr. Hussain opined that claimant suffered from a mild pulmonary impairment. Director's Exhibit 65. Dr. Hussain, however, further opined that claimant retained the respiratory capacity to perform the work of a coal miner. *Id.*

<sup>7</sup> Contrary to claimant's contention, an administrative law judge is not required to consider claimant's age, education and work experience in determining whether claimant has established that he is totally disabled from his usual coal mine employment. *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83, 1-87 (1988).

In light of our affirmance of the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), each 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*).

Accordingly, 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