

BRB No. 06-0230 BLA

EDDIE W. SIZEMORE)
)
 Claimant-Petitioner)
)
 v.)
)
 SHAMROCK COAL COMPANY,) DATE ISSUED: 08/09/2006
 INCORPORATED)
)
 and)
)
 JAMES RIVER COAL COMPANY)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
) DECISION and ORDER

Party-in-Interest

Appeal of the Decision and Order - Denying Benefits Joseph E. Kane,
Administrative Law Judge, United States Department of Labor.

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

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

Michelle S. Gerdano (Howard M. Radzely, 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 (04-BLA-5515) of

Administrative Law Judge Joseph E. Kane (the administrative law judge) 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 found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits on the claim.

On appeal, claimant contends that the administrative law judge erred in finding that the x-ray and medical opinion evidence did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), (4). Claimant also contends that the administrative law judge erred when he found that the medical opinion evidence failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). Additionally, claimant contends that the Department of Labor (DOL) failed to provide him with a complete and credible pulmonary evaluation pursuant to Section 413(b) of the Act. 30 U.S.C. §923(b). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director) responds, asserting that Dr. Simpao's medical report satisfied his obligation to provide claimant with a complete and credible pulmonary evaluation.¹

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant first contends that the administrative law judge erred in failing to find that the x-ray evidence established the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant asserts that the administrative law judge improperly relied upon the interpretations by physicians with superior credentials and the numerical superiority of the negative x-ray readings, noting that the Board has held that the administrative law judge is not required to defer to doctors with superior qualifications, nor is he required to accept as conclusive the numerical superiority of the x-ray interpretations. Claimant's Brief at 2-4.

In this case, the administrative law judge properly found that the preponderance of the

¹ The administrative law judge's findings that the evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2)-(3), is affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

x-ray readings by better qualified physicians was negative. Decision and Order at 4, 9.² This was a proper qualitative and quantitative analysis of the x-ray evidence. *Staton v. Norfolk and 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). Moreover, claimant's contention that the administrative law judge "may have selectively analyzed" the x-ray evidence is without merit. Claimant's Brief at 3-4. Claimant cites to nothing in the record to support this speculation, and a review of the evidence and the administrative law judge's decision does not reveal a selective analysis of the x-ray evidence. *White v. New White Coal Co.*, 23 BLR 1-1, 1-5 (2004). Accordingly, we affirm the administrative law judge's finding that the x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1).

Claimant next contends that the administrative law judge should have found the existence of pneumoconiosis established pursuant to Section 718.202(a)(4) based on the reasoned opinion of Dr. Baker diagnosing the existence of coal workers' pneumoconiosis and a respiratory impairment arising, in part, out of coal mine employment. Claimant's Brief at 4-5. In considering the opinions of Dr. Baker, the administrative law judge stated:

Acknowledging that Dr. Baker performed other physical and objective testing, he listed that he expressly relied on [c]laimant's positive x-ray and coal dust exposure for his clinical determination of pneumoconiosis. Moreover, he failed to state how the results from his other objective testing might have impacted his diagnosis of pneumoconiosis. As he does not indicate any other reasons for his diagnosis of pneumoconiosis beyond the x-ray and exposure history, I find his report with respect to a diagnosis of clinical pneumoconiosis is unreasoned. In addition, Dr. Baker diagnosed [c]laimant with bronchitis based on his history. However, Dr. Baker fails to opine [c]laimant's bronchitis is chronic and related to coal dust exposure; therefore, his diagnosis of bronchitis does not constitute a finding of legal pneumoconiosis. (DX 8). I give Dr. Baker's opinion little weight.

²The administrative law judge found that the April 4, 2002 x-ray was read positive for the existence of pneumoconiosis by Dr. Baker, a B-reader, but negative by Dr. Halbert, a Board-certified radiologist and B-reader. The October 17, 2002 x-ray was read positive by Dr. Simpao, but negative by Dr. Poulos, a Board-certified radiologist and B-reader. Dr. Barrett reread Dr. Simpao's October 17, 2002 x-ray, and noted only that the film quality was "1", the highest quality possible, without commenting on whether the film was positive or negative for pneumoconiosis. Director's Exhibit 10. A December 11, 2002 x-ray was read negative by Dr. Rosenberg, a B-reader, and a January 19, 2005 x-ray was read negative by Dr. Broudy, a B-reader.

Decision and Order at 10-11. Accordingly, the administrative law judge properly found that the opinion of Dr. Baker failed to establish the existence of either clinical or legal pneumoconiosis. *See Eastover Mining Co. v. Williams*, 338 F.2d 501, 22 BLR 2-625 (6th Cir. 2003); *Cornett v. Benham Coal Co.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR at 1-155; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). We reject, therefore, claimant's contentions and affirm the administrative law judge's finding that the medical opinion evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Claimant next contends that the Director failed to provide him with a complete, credible pulmonary evaluation since the administrative law judge discredited the opinion of Dr. Simpao on the issue of pneumoconiosis, *i.e.*, "the Director has failed to provide claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 5-6. The Director responds that he is only required to provide claimant with a complete and credible evaluation, not a dispositive one. Director's Brief at 1-2.

The record reflects that Dr. Simpao conducted an examination and a full range of testing, addressing each element of entitlement. In considering the opinion of Dr. Simpao, the administrative law judge found that it was outweighed by the opinions of Drs. Broudy and Rosenberg which were better reasoned. Decision and Order at 10-11. This was proper. *See Williams*, 338 F.3d at 514, 22 BLR 2-644; *see also 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). Accordingly, we affirm the administrative law judge's finding that claimant failed to establish the existence of either clinical or legal pneumoconiosis. As claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement, we need not reach claimant's argument concerning total disability. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Ddirector, 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