

BRB No. 06-0294 BLA

DAVID ADAMS)
)
 Claimant-Petitioner)
)
 v.)
)
 BLUEGRASS PROCESSING) DATE ISSUED: 08/30/2006
 COMPANY)
)
 and)
)
 STIRLING COOKE INSURANCE)
 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 – Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

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

Norman E. Harned & W. Greg Harvey (Harned, Bachert & Denton, LLP), Bowling Green, Kentucky, for employer.

Barry H. Joyner (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 – Denial of Benefits (04-BLA-6033) of Administrative Law Judge Robert L. Hillyard 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). After crediting claimant with twenty-one years of coal mine employment, as stipulated by the parties, Decision and Order at 3; Transcript at 11, 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)(1)-(4), and total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits. On appeal, claimant argues that the administrative law judge violated the evidentiary limitations at 20 C.F.R. §725.414(a)(3)(ii) by admitting more than one x-ray with respect to employer’s rebuttal of claimant’s affirmative case. Claimant also argues 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 asserts that the Director, Office of Workers’ Compensation Programs (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. Claimant further argues that the administrative law judge erred in finding that claimant was not totally disabled 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 has filed a limited response, asserting that claimant’s argument regarding the evidentiary limitations has no merit, and requesting that the Board reject claimant’s argument that the case must be remanded to provide him with another pulmonary evaluation.

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 evidence insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv).¹ In considering the evidence at Section 718.204(b)(2)(iv), the administrative law judge gave the opinions of Drs. Dahhan and Broudy, that claimant is not totally disabled, substantial weight. In contrast,

¹ Because no party challenges the administrative law judge’s findings that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 11-12.

the administrative law judge gave less weight to the contrary opinion of Dr. Simpao. The administrative law judge found that Dr. Simpao failed to explain how the symptoms, objective studies, and findings on physical examination, support his opinion that the miner is totally disabled. On the other hand, the administrative law judge found that the opinions of Drs. Dahhan and Broudy were based on normal physical examinations, and nonqualifying pulmonary function and blood gas studies. An administrative law judge may properly credit the opinions of physicians that he determines are better supported by the objective evidence of record. *See Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Decision and Order at 12; Employer's Exhibits 1, 3. Likewise, an administrative law judge may rationally give less weight to a medical opinion, where the physician fails to explain how the symptoms and findings on physical examination, as well as the nonqualifying pulmonary function and normal blood gas studies, support his total disability conclusion.² *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); Decision and Order at 12; Director's Exhibit 11. Consequently, 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). Moreover, we affirm the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2).

Claimant also contends that the Director failed to fulfill his statutory obligation to provide claimant with a complete, credible pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required under Section 413(b) of the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.401, 725.405(b); *see Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990)(*en banc*). Claimant specifically argues that the Director failed to provide him with a credible pulmonary evaluation because Dr. Simpao's opinion of pneumoconiosis was discredited by the administrative law judge. Thus, claimant argues that he was not provided with a complete pulmonary evaluation with respect to the existence of pneumoconiosis. As noted by the Director, claimant does not argue that Dr. Simpao's opinion of total disability is similarly defective. Because we have affirmed the administrative law judge's finding that the evidence is insufficient to establish total disability at Section 718.204(b)(2), any defect in Dr. Simpao's opinion on the issue of pneumoconiosis would not affect the outcome of this case. We, therefore, deny claimant's request to remand this case for a full pulmonary evaluation.

In light of our affirmance of the administrative law judge's finding that the evidence is

² As the administrative law judge provided one valid reason for giving less weight to Dr. Simpao's opinion of total disability, we decline to address the administrative law judge's remaining reason for giving Dr. Simpao's opinion less weight. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382, 1-383 n. 4 (1983); Decision and Order at 12; Director's Exhibit 11.

insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Thus, we need not address claimant's argument at Section 718.202(a)(1), including his argument at Section 725.414(a)(3)(ii) with respect to the x-rays. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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