

BRB No. 07-0128 BLA

B.A., JR.)
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 Claimant-Petitioner)
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 v.)
)
 SOVEREIGN MINING COMPANY)
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 and)
)
 SECURITY COMPANY OF HARTFORD) DATE ISSUED: 08/16/2007
)
 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 Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

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

Paul E. Jones (Jones, Walters, Turner & Shelton, PLLC), Pikeville, Kentucky, for employer.

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 (05-BLA-5159) of Administrative Law Judge Janice K. Bullard 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). The administrative law judge credited claimant with fourteen years of coal mine employment, based on the parties' stipulation, and adjudicated this claim, filed on October 11, 2002, pursuant to the regulations contained in 20 C.F.R. Part 718.¹ The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge did not properly weigh the evidence relevant to Sections 718.202(a)(1) and 718.204(b)(2)(iv). Additionally, claimant argues that the Department of Labor failed to provide him with a complete and credible pulmonary evaluation to substantiate his claim. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has also responded and urges the Board to reject claimant's allegation that he was not provided with a complete 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'Keefe 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, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to Section 718.202(a)(1), the administrative law judge considered the x-ray evidence consisting of four x-ray interpretations of three x-rays. The administrative

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because claimant's coal mine employment occurred in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 3.

law judge found that the February 3, 2003 x-ray that was read positive for pneumoconiosis by Dr. Broudy, a B reader, was countered by a negative reading by Dr. Wheeler, who is a dully qualified Board-certified radiologist and B reader. Decision and Order at 6; Director's Exhibits 14, 16. The administrative law judge found that the remaining readings, all by B readers, were negative. Based on a proper qualitative analysis of the conflicting x-ray interpretations, the administrative law judge properly found that claimant did not establish the existence of pneumoconiosis by a preponderance of the x-ray evidence. Decision and Order at 7; *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 1-4 (2004); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Consequently, claimant's arguments that the administrative law judge improperly relied on the readers' credentials, that he merely counted the negative readings, and "may have 'selectively analyzed'" the readings, lack merit. Claimant's Brief at 3. We therefore affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Because claimant does not challenge the administrative law judge's findings pursuant to Section 718.202(a)(2)-(4), they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Claimant also contends that the Director has failed to provide him with a complete, credible pulmonary evaluation sufficient to substantiate his claim as required under the Act. Claimant argues that the administrative law judge's conclusions that Dr. Simpao's report was based merely upon an erroneous x-ray interpretation and that the doctor did not explain how his findings supported a diagnosis of pneumoconiosis or offer a conclusion regarding the issue of total disability, support this contention. The Director asserts that Dr. Simpao validly diagnosed clinical pneumoconiosis based on his reading of an x-ray but his opinion was outweighed by contrary evidence. The Director argues that "[t]he Act does not guarantee that the DOL-sponsored examination trumps all other evidence: the medical examination must be credible, not necessarily dispositive." Director's Letter at 1. Consequently, the Director contends that remand to the district director for another pulmonary evaluation is not required in this case. *Id.* at 2. We agree.

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406. The issue of whether the Director has met this duty may arise where "the administrative law judge finds a medical opinion incomplete," or where "the administrative law judge finds that the opinion, although complete, lacks credibility." *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); *accord 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).

The administrative law judge found that Dr. Simpao conducted an examination and the full range of testing required by the regulations. Decision and Order at 8; Director's Exhibit 11; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). On the issue of the existence of pneumoconiosis, the administrative law judge rationally discounted Dr. Simpao's diagnosis of pneumoconiosis because it was based largely on a positive x-ray reading that the administrative law judge found outweighed by negative readings of physicians with superior radiological credentials and by the "more comprehensive" contrary opinions of Drs. Broudy and Fino. Decision and Order at 10; *see Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999)(explaining that "ALJ's [sic] may evaluate the relative merits of conflicting physicians' opinions and choose to credit one over the other"). Because Dr. Simpao's report was complete regarding the issue of the existence of pneumoconiosis and the administrative law judge merely found it outweighed, we must reject claimant's argument that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. *Cf. Hodges*, 18 BLR at 1-93.

Because claimant failed to establish the existence of pneumoconiosis, a necessary element of entitlement in a miner's claim under Part 718, we affirm the administrative law judge's denial of benefits. *Anderson*, 12 BLR at 1-112. Consequently, we need not address claimant's arguments concerning the administrative law judge's finding that claimant did not establish that he is totally disabled.

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