

BRB No. 07-0152 BLA

H.H. )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 MANALAPAN MINING COMPANY, )  
 INCORPORATED )  
 ) DATE ISSUED: 08/29/2007  
 Employer-Respondent )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

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

W. Stacy Huff (Huff Law Office), Harlan, Kentucky, for employer.

Barry H. Joyner (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 (04-BLA-6447) of Administrative Law Judge Richard K. Malamphy 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). This case involves a claim filed on February 7, 2003.

After crediting claimant with at least twenty-two years of coal mine employment, the administrative law judge found that the evidence did not 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). Accordingly the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Claimant also argues that the administrative law judge erred in finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant further contends 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 his claim. Employer responds in support of the administrative law judge's denial of benefits. 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 alleged failure to provide claimant with a complete, credible 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *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*).

Claimant contends that the administrative law judge erred in finding that the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).<sup>1</sup> The x-ray evidence consists of four interpretations of two x-rays taken on May 15, 2003 and September 15, 2004. Although Dr. Simpao, who has no special radiological qualifications, interpreted claimant's May 15, 2003 x-ray as positive for pneumoconiosis, Director's Exhibit 11, Dr. West, a B reader and Board-certified

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<sup>1</sup> Because no party challenges the administrative law judge's findings that the evidence did not 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).

radiologist, interpreted this x-ray as negative for the disease.<sup>2</sup> Director's Exhibit 15. The administrative law judge acted within his discretion in crediting Dr. West's negative interpretation of claimant's March 15, 2003 x-ray, over Dr. Simpao's positive interpretation, based upon Dr. West's superior qualifications. 20 C.F.R. §718.202(a)(1); *see Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 4.

The remaining x-ray interpretations of record are negative for pneumoconiosis.<sup>3</sup> Therefore, the administrative law judge found that the x-ray evidence did not establish the existence of pneumoconiosis.

The administrative law judge based his finding on a proper qualitative analysis of the x-ray evidence. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004). Consequently, claimant's arguments that the administrative law judge improperly relied on the readers' credentials, merely counted the negative readings, and that he "may have 'selectively analyzed'" the readings, lack merit.<sup>4</sup> Claimant's Brief at 3. We, therefore, affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

In light of our affirmance of the administrative law judge's findings that the evidence did not 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*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2. Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Claimant contends that because Dr. Simpao, in his May 15, 2003 report, made no finding regarding whether claimant was totally disabled from a pulmonary standpoint, "the Director has failed to provide the claimant with a complete, credible pulmonary

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<sup>2</sup> Dr. Barrett, a B reader and Board-certified radiologist, interpreted claimant's May 15, 2003 x-ray for quality purposes only. Director's Exhibit 12.

<sup>3</sup> Dr. Dahhan, a B reader, and Dr. Poulos, a B reader and Board-certified radiologist, interpreted claimant's September 15, 2004 x-ray as negative for pneumoconiosis. Employer's Exhibits 2, 5.

<sup>4</sup> Claimant has provided no support for his assertion that the administrative law judge "may have 'selectively analyzed' the x-ray evidence." Claimant's Brief at 3.

evaluation sufficient to substantiate the claim, as required under the Act.” Claimant’s Brief at 4.

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).

Claimant does not assert any defect with respect to Dr. Simpao’s finding regarding the existence of pneumoconiosis. On the issue of the existence of pneumoconiosis, the administrative law judge found that Dr. Simpao’s diagnosis of “CWP 1/1” was based on a positive x-ray reading that the administrative law judge found outweighed by the negative reading of a physician with superior radiological credentials. Decision and Order at 5. This was the sole cardiopulmonary diagnosis listed in Dr. Simpao’s report, and the administrative law judge merely found the specific medical data for Dr. Simpao’s diagnosis to be outweighed.<sup>5</sup> Because the administrative law judge merely found Dr. Simpao’s opinion outweighed on the issue of pneumoconiosis, claimant was provided a complete and credible pulmonary evaluation regarding the existence of pneumoconiosis. *Cf. Hodges*, 18 BLR at 1-93. Because the administrative law judge’s finding that the evidence did not establish the existence of pneumoconiosis is sufficient to support his denial of benefits, we agree with the Director that any defect in Dr. Simpao’s opinion with regard to the issue of total disability is inconsequential. *See Director’s Brief* at 1 n.1.

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<sup>5</sup> The administrative law judge also noted that Drs. Dahhan and Rosenberg opined that claimant did not suffer from coal workers’ pneumoconiosis. Decision and Order at 5; Employer’s Exhibits 1, 6.

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