

BRB No. 05-0629 BLA

ELMER COOTS)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 12/28/2005
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

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

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (03-BLA-6607) of Administrative Law Judge Rudolf L. Jansen 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). The administrative law judge credited claimant with twenty-three years of coal mine employment.¹ Decision and Order at 4; Hearing Transcript at 8. Based on the date of filing, the administrative law judge

¹ The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibits 3, 6. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 3. The administrative law judge found that the evidence of record did not establish either the existence of pneumoconiosis or the presence of a totally disabling respiratory or pulmonary impairment, pursuant to 20 C.F.R. §§718.202(a), 718.204(b)(2). Decision and Order at 7 - 12. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in failing to find the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(1), (a)(4), and in failing to find total disability established pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant also asserts that he was not provided a complete pulmonary evaluation as required by the Act and regulations. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter asserting that claimant was provided with a complete pulmonary evaluation.²

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).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, 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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 718.202(a)(1), the administrative law judge considered four readings of two x-rays in light of the readers' radiological qualifications. Decision and Order at 8. The administrative law judge noted that the October 21, 2002 x-ray was read as positive by Dr. Simpao, who has no special radiological credentials, and observed that the March 12, 2003 x-ray was read as positive by Dr. Baker, who is a B-reader. Decision and Order at 5; Director's Exhibits 10, 11. The administrative law judge also considered, however, that both x-rays were read as negative by Dr. Barrett, who is qualified as both a Board-certified radiologist and a B-reader. Decision and Order at 5; Director's Exhibit 12. In view of Dr. Barrett's superior radiological credentials, the administrative law judge determined that "the x-ray evidence fails to establish pneumoconiosis under Section 718.202(a)(1)." Decision and Order at 8. This was a proper qualitative analysis

² The administrative law judge's length of coal mine employment determination and his findings pursuant to 20 C.F.R. §§718.202(a)(2)-(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

of the x-ray evidence. *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). Consequently, claimant's arguments that the administrative law judge improperly relied on the readers' credentials, merely counted the negative readings, and "may have 'selectively analyzed'" the readings, lack merit. Claimant's Brief at 3; *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004)(rejecting identical arguments). We therefore affirm the administrative law judge's finding pursuant to Section 718.202(a)(1).

Pursuant to Section 718.202(a)(4), the administrative law judge considered medical reports from Drs. Baker and Simpao. Director's Exhibits 10, 11. Although both physicians diagnosed claimant with pneumoconiosis, the administrative law judge was not persuaded by their opinions. Specifically, he found that Dr. Baker's opinion was not well documented or reasoned, and he assigned "less probative weight" to Dr. Simpao's diagnosis because it was based on a positive chest x-ray that was reread as negative by a more highly qualified physician. Decision and Order at 9.

Claimant asserts that Dr. Baker's report was well reasoned and should not have been rejected for the reasons given by the administrative law judge. Claimant's Brief at 4-5. We disagree. The administrative law judge was within his discretion to find that Dr. Baker's diagnosis of "Coal Workers' Pneumoconiosis 1/0," based on an x-ray reading and a reference to claimant's coal dust exposure, was not a well reasoned and documented opinion. See *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); Director's Exhibit 11 at 4. Additionally, the administrative law judge recognized that Dr. Baker diagnosed chronic bronchitis due to both coal dust exposure and cigarette smoking, but permissibly found that Dr. Baker relied solely on a history reported by claimant to make the diagnosis, and did not explain how the documentation of his report supported either the diagnosis or Dr. Baker's determination of its etiology. See *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark*, 12 BLR at 1-155. Substantial evidence supports the administrative law judge's finding. Because claimant makes no other allegation of error, we affirm the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(4).

Claimant next contends that because the administrative law judge declined to credit a diagnosis of pneumoconiosis contained in Dr. Simpao's October 21, 2002 medical report provided by the Department of Labor, "the Director has failed to provide the claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 5. The Director responds that the administrative law judge merely found that Dr. Simpao's diagnosis of clinical pneumoconiosis by x-ray was outweighed, not defective, and he asserts that the fact that

the doctor's opinion was outweighed does not mean that the Director failed to meet his statutory obligation. Director's Brief at 3-4.

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, Inc.*, 18 BLR 1-84, 1-88 n.3 (1994); *see also Newman v. Director, OWCP*, 745 F. 2d 1162, 7 BLR 2-25 (8th Cir. 1984).

The record reflects that Dr. Simpao conducted an examination and the full range of testing required by the regulations and addressed each element of entitlement on the Department of Labor examination form. 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 gave "less probative weight" to Dr. Simpao's diagnosis of "CWP 1/1" because it was based on a positive x-ray reading that the administrative law judge found outweighed by the negative reading of a physician with superior credentials. Decision and Order at 9; Director's Exhibit 11 at 4; *see Williams*, 338 F.3d at 514, 22 BLR at 2-649. This was the sole cardiopulmonary diagnosis in Dr. Simpao's report, and the administrative law judge merely found the specific medical data for the diagnosis to be outweighed. Director's Exhibit 11 at 4. The administrative law judge additionally found that to the extent that Dr. Simpao also based his diagnosis on claimant's objective tests and symptoms, his opinion was not as well reasoned or supported as it might have been, thus meriting "less probative weight." Decision and Order at 9. Consequently, there is no merit to claimant's argument that the administrative law judge's treatment of Dr. Simpao's opinion establishes that the Director failed to fulfill his statutory obligation to provide claimant with a complete 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. *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. Therefore, we need not address claimant's allegations of error in the administrative law judge's finding that claimant did not establish total disability pursuant to Section 718.204(b)(2).

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

JUDITH S. BOGGS
Administrative Appeals Judge