

BRB No. 06-0476 BLA

JASPER HUGHES )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 ARCH ON THE NORTH FORK, )  
 INCORPORATED )  
 )  
 and )  
 )  
 UNDERWRITERS SAFETY & CLAIMS ) DATE ISSUED: 12/14/2006  
 )  
 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 – 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.

Ralph D. Carter (Barret, Haynes, May, Carter & Davidson, P.S.C.), Hazard, Kentucky, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (04-BLA-5475) of Administrative Law Judge Rudolf L. Jansen on a claim<sup>1</sup> filed pursuant to the provisions

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<sup>1</sup> Claimant filed an application for benefits on May 23, 2002. Director’s Exhibit 2.

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 initially credited the parties' stipulation that claimant worked in qualifying coal mine employment for twenty years. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total respiratory disability pursuant to 718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find the existence of pneumoconiosis established by x-ray and medical opinion evidence under Sections 718.202(a)(1) and (a)(4) and total respiratory disability under Section 718.204(b)(2)(iv). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating his intention not to participate in this appeal.<sup>2</sup>

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 the 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'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant first contends that the administrative law judge erred in finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1). Claimant contends that in doing so the administrative law judge relied almost solely on the qualifications of the x-ray readers and the numerical superiority of the negative x-ray interpretations. Claimant contends that the administrative law judge is not required either to defer to a physician with superior qualifications or to accept as conclusive the numerical superiority of x-ray interpretations. Claimant further contends that the administrative law judge "may have selectively analyzed" the x-ray evidence.

Section 718.202(a)(1) provides, in pertinent part, "where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration *shall* be given to the radiological qualifications of the physicians interpreting such X-rays." 20 C.F.R. §718.202(a)(1) [emphasis added]. After finding that the x-ray evidence consists of four x-ray interpretations of two chest x-ray films with three interpretations read as negative for pneumoconiosis and one interpretation read as positive for pneumoconiosis, the

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<sup>2</sup> We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(2)-(3), 718.204(b)(2)(i)-(iii) because these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 4, 9, 11.

administrative law judge considered the radiological expertise of the physicians and properly found that the negative interpretations of Dr. Wiot, a Board-certified radiologist and B-reader, and of Dr. Lockey, a B-reader, outweighed the positive interpretation rendered by Dr. Simpao because Dr. Simpao possessed no demonstrated radiological expertise or credentials.<sup>3</sup> 20 C.F.R. §718.202(a)(1); *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. 1994); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 9; Director's Exhibits 10, 13-15. Because the administrative law judge's determination to accord dispositive weight to the negative interpretations rendered by the physicians with superior, demonstrated radiological qualifications was rational and supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). In addition, we reject claimant's contention that the administrative law judge "may have selectively analyzed" the x-ray evidence inasmuch as claimant has not provided any support for that assertion, nor does a review of the evidence and the administrative law judge's Decision and Order reveal that he engaged in a selective analysis of the x-ray evidence. *See White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-4 (2004).

Claimant also contends that the administrative law judge erred in finding that Dr. Simpao's reasoned and documented opinion did not establish the existence of pneumoconiosis. Claimant contends that the administrative law judge erred in rejecting Dr. Simpao's opinion because it was based on his positive x-ray interpretation and an administrative law judge may not discredit the opinion of a physician whose report is based on a positive x-ray interpretation merely because it is contrary to the weight of the other x-ray evidence of record or because the record contains subsequent, negative x-ray interpretations. Moreover, claimant contends that because the interpretation of medical data is for medical experts and Dr. Simpao's finding of pneumoconiosis was based on a thorough physical examination, claimant's medical and work histories, a chest x-ray, and pulmonary function and arterial blood gas studies, it was error for the administrative law judge to interpret medical tests and substitute his own conclusions for those of the physician.

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<sup>3</sup> The administrative law judge correctly noted that Dr. Barrett, a Board-certified radiologist and B-reader, read the September 30, 2002 x-ray film for film quality only. Decision and Order at 6; Director's Exhibit 12.

Contrary to claimant's argument, the administrative law judge did not discount Dr. Simpao's opinion diagnosing the presence of pneumoconiosis on the basis that Dr. Simpao relied on an x-ray interpretation that was outweighed by other contrary interpretations. In assessing the credibility of the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge found that while Dr. Simpao's opinion was documented, reasoned, and entitled to additional weight based on Dr. Simpao's pulmonary expertise, he concluded that the contrary opinion of Dr. Lockey, that claimant did not have coal workers' pneumoconiosis, was more persuasive and, therefore, entitled to determinative weight. The administrative law judge determined that the opinion of Dr. Lockey, who is Board-certified in internal medicine and the subspecialty of pulmonary diseases, outweighed the opinion of Dr. Simpao because Dr. Lockey's opinion was based on a complete and thorough pulmonary evaluation of claimant, was better supported by the objective medical data of record, *i.e.*, lack of radiographic findings of pneumoconiosis and normal pulmonary function and arterial blood gas studies, and was rendered by a pulmonary specialist. Consequently, the administrative law judge determined that Dr. Lockey's opinion was more reliable, better documented, better reasoned, and better supported than that of Dr. Simpao, and as such, he permissibly accorded Dr. Lockey's opinion dispositive weight. *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003) (administrative law judge as factfinder should decide whether physician's report is sufficiently reasoned and documented); *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Director's Exhibits 13, 15. We, therefore, reject claimant's argument. Accordingly, because claimant has not otherwise challenged the administrative law judge's crediting of the opinion of Dr. Lockey that claimant does not suffer from pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Consequently, because the administrative law judge's determination that claimant failed to affirmatively establish the existence of pneumoconiosis pursuant to Section 718.202(a), a requisite element of entitlement under Part 718, is rational, contains no reversible error, and is supported by substantial evidence, we affirm the administrative law judge's determination that claimant's entitlement to benefits is precluded. *See* 20 C.F.R. §718.202(a); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (*en banc*).<sup>4</sup>

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<sup>4</sup> Our affirmance of the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a) precludes the need to address the parties' arguments with respect to the administrative law judge's findings concerning total respiratory disability under Section 718.204(b). *See Trent v.*

Accordingly, the Decision and Order – Denying Benefits of the administrative law judge 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

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*Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (*en banc*).