BRB No. 99-0521 BLA

EAF McKNIGHT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Remand of Alfred Lindeman, Administrative Law Judge, United States Department of Labor.

Eaf McKnight, Jackson, Kentucky, *pro se*.

Jeffrey S. Goldberg (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits on Remand (97-BLA-194) of Administrative Law Judge Alfred Lindeman 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 is before the Board for a third time. Initially, Administrative Law Judge Rudolf L. Jansen issued a Decision and Order denying benefits. After determining that claimant established a coal mine employment history of eight years, Judge Jansen determined that claimant failed to establish entitlement pursuant to 20 C.F.R. Part 410.490 or under the permanent criteria found at 20 C.F.R. Part 410, Subpart D. Subsequent to an appeal by claimant, the Board affirmed the administrative law

judge's length of coal mine employment determination and the finding that claimant failed to establish entitlement pursuant to Part 410.490, but vacated the administrative law judge's finding at Part 410, Subpart D, and remanded the case for further consideration pursuant to 20 C.F.R. Part 718. *McKnight v. Director, OWCP,* BRB No. 89-3119 BLA (Mar. 11, 1993)(unpub.). Subsequently, Administrative Law Judge Lindeman issued a Decision and Order denying benefits as he concluded that claimant failed to establish entitlement to benefits pursuant to 20 C.F.R. Part 718. Claimant appealed and the Board affirmed the administrative law judge's findings under Part 718, but vacated the denial of benefits and remanded the claim for further consideration pursuant to 20 C.F.R. Part 727 in light of the concession of the Director, Office of Workers' Compensation Programs (the Director), that claimant established over ten years of coal mine employment. *McKnight v. Director*, *OWCP*, BRB No. 98-0186 BLA (Oct. 21, 1998)(unpub.). On remand, the administrative law judge issued the Decision and Order from which claimant now appeals. The administrative law judge found that claimant was unable to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(1)-(4) and was thus precluded from establishing entitlement to benefits. The Director has filed a response brief urging the Board to affirm the denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-361 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In finding that claimant failed to establish invocation of the interim presumption of total disability due to pneumoconiosis pursuant to Section 727.203(a)(1), the administrative law judge considered the entirety of x-ray readings of record, *see* Director's Exhibits 17-20, 32, 56-60, 65, found that only three interpretations were positive for the existence of the disease, and that only one of the positive interpretations was rendered by a B-reader, Dr. Baker.[1] Director's Exhibit 56. The

[1]A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16 , 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-

administrative law judge concluded that Dr. Baker's lone positive interpretation was outweighed by the numerous negative interpretations rendered by dually-qualified B-readers and board-certified radiologists and further concluded that claimant failed to produce any positive biopsy evidence of record. Accordingly, inasmuch as the administrative law judge has considered the entirety of relevant evidence of record and has relied on a qualitative rather than quantitative analysis of such evidence we affirm his determination that claimant has failed to establish invocation of the presumption pursuant to Section 727.203(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); *Woodward v. Director, OWCP,* 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Tussey v. Island Creek Coal Co.,* 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993).

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211 (1985). A board-certified radiologist is a physician who has been certified by the American Board of Radiology as having a particular expertise in the field of radiology.

In finding that claimant failed to establish invocation of the interim presumption of total disability due to pneumoconiosis pursuant to Section 727.203(a)(2), the administrative law judge found that claimant failed to produce any credible qualifying pulmonary function studies[2] and was thus precluded from establishing invocation of the interim presumption pursuant to this subsection. The administrative law judge found that the qualifying studies of September 19, 1996, Director's Exhibit 65, and June 22, 1982, Director's Exhibit 32, were entitled to no weight as physicians reviewing these studies determined that they were based on suboptimal efforts by claimant. Decision and Order on Remand at 3. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this claim arises, has held that the quality standards enunciated in Part 718 are applicable to those claims, such as the instant claim, which are adjudicated under Part 727, *see Prater v. Hite Preparation Co.,* 829 F.2d 1363, 10 BLR 2-297 (6th Cir. 1987); *see also Wiley v. Consolidation Coal Co.,* 892 F.2d 490, 13 BLR 2-214 (6th Cir. 1989), modified No. 89-3090 (6th Cir., Oct. 10, 1990), and that a physician's opinion which calls into question the validity of an objective study based on these quality standards is entitled to great weight, *see Wiley, supra*. Thus, inasmuch as the administrative law judge determined that the weight of the credible pulmonary function study evidence was non-qualifying, *see Ondecko, supra*; *see also Wiley, supra*; *Prater, supra*; *see generally Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Winchester v. Director, OWCP*, 9 BLR 1-177 (1986), we affirm the administrative law judge's determination that claimant failed to establish invocation of the interim presumption at Section 727.203(a)(2).

In finding that claimant failed to establish invocation of the interim presumption of total disability due to pneumoconiosis pursuant to Section 727.203(a)(3), the administrative law judge properly found that the qualifying blood gas study of August 3, 1988, Director's Exhibit 32, was entitled to little weight based on the opinion of reviewing physician Dr. Kramen. *See Prater, supra*; *Wiley*, *supra*. The administrative law judge further concluded that the blood gas study of August 13, 1979, Director's Exhibit 15, which demonstrated qualifying values prior to exercise,

[2]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. §718.204, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

was outweighed by the remaining valid studies of record, all of which demonstrated non-qualifying values, Director's Exhibits 15, 16, 55, 56, 65, and, in permissible exercise of his discretion, concluded that claimant failed to establish invocation of the interim presumption at Section 727.203(a)(3). *See Ondecko, supra*. Accordingly, we affirm that determination.

In finding that claimant failed to establish invocation of the interim presumption of total disability due to pneumoconiosis pursuant to Section 727.203(a)(4), the administrative law judge permissibly discredited the medical opinions of the five physicians who concluded that claimant suffered from a totally disabling respiratory impairment. The administrative law judge specifically found that the opinions of Drs. Cornett, Director's Exhibit 32, Clarke, Director's Exhibit 32, and Judge, Director's Exhibit 32, were based on invalid objective studies and thus concluded that they were unreliable. The administrative law judge further found that the opinions of Drs. Cooper, Director's Exhibit 14, and Baker, Director's Exhibit 56, were also unreliable as the physicians failed to explain their conclusions that claimant was totally disabled. An administrative law judge may accord little weight to those physicians' opinions he determines are not supported by the underlying documentation. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp*. 8 BLR 1-46 (1985). Further, an administrative law judge may accord little weight to physicians' opinions which are unexplained. *See York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Cooper v. United States Steel Corp.*, 7 BLR 1-842 (1985); *White v. Director, OWCP*, 6 BLR 1-368, 1-371 (1983). The administrative law judge properly accorded greatest weight to the opinions of Drs. Wicker and Broudy, that claimant was not totally disabled, Director's Exhibits 61, 65, inasmuch as these physicians' opinions were well supported by the underlying documentation, *see Clark, supra*; *Peskie, supra*; *Lucostic, supra*, notwithstanding Dr. Broudy's status as a non-treating physician. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Tussey*, *supra*. Accordingly, we affirm the administrative law judge's determination that claimant has failed to establish invocation of the interim presumption pursuant to Section 727.203(a)(4). *See Ondecko*, *supra*.

Accordingly, the administrative law judge's Decision and Order Denying Benefits on Remand is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge