

BRB No. 99-0552 BLA

JAMES E. GROSS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CUMBERLAND RIVER COAL)	DATE ISSUED:
CORPORATION)	
)	
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 Denying Benefits (Upon Remand by the Benefits Review Board) of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson and Kilcullen), Washington, D.C., for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (Upon Remand by the Benefits Review Board) (95-BLA-1477) of Administrative Law Judge Robert D. Kaplan 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 the second time. In his first Decision and Order, the administrative law judge found that claimant established at least twenty-two years of coal mine employment, and based on the filing date of the claim, applied the regulations found at 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). Accordingly, benefits were denied.

Claimant appealed, and in *Gross v. Cumberland River Coal Co.*, BRB No. 96-0903 BLA (June 11, 1997)(unpub.), the Board affirmed the administrative law judge's finding that claimant established twenty-two years of coal mine employment, that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3), and that the discrediting of Dr. Baker's 1993 medical opinion was rational, but vacated the administrative law judge's finding at Section 718.202(a)(4) and remanded the case for further consideration of the medical opinions of Drs. Wright and Anderson and Dr. Baker's 1992 opinion pursuant to Section 718.202(a)(4). On remand, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). Benefits were again denied. Claimant appeals, contending that the administrative law judge erred in his weighing of the medical evidence. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), is not participating in this appeal.

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational and consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

Claimant appeals, contending that the administrative law judge's rejection of the opinions of Drs. Baker, Anderson and Wright because their opinions were based solely on a positive x-ray, is improper, and that the administrative law judge erred therefore in finding these opinions "unreasoned." We disagree. The administrative law judge found that all three physicians diagnosed pneumoconiosis, but that their opinions were based on nothing more than positive x-ray readings of pneumoconiosis inasmuch as their examinations and testing of claimant were characterized as normal and they did not explain how claimant's symptoms and history relate to their diagnosis of pneumoconiosis.¹ Claimant's Exhibits 2, 3; Decision and Order at 2-3. Further, in light of the unreliability of their opinions and as the x-ray evidence as a whole was negative for pneumoconiosis, a finding which the Board previously affirmed, the administrative law judge concluded that these opinions should be "discounted." Decision and Order at 3. Although the administrative law judge may not discredit an opinion solely because it is based on a positive reading, which is contrary to the weight of the other x-ray evidence of record, *Church v. Eastern Associated Coal Co.*, 20 BLR 1-8 (1996), he may discredit the opinion if, as here, it is not supported by underlying documentation and is not reasoned. *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *Anderson v.*

¹ The evidence of record also contains the medical opinion of Dr. Lane, who found that claimant did not have pneumoconiosis. Director's Exhibits 8, 27. The administrative law judge considered his opinion, but did not assign any weight to it. Decision and Order at 3.

Valley Camp of Utah, Inc., 12 BLR 1-111, 1-113 (1989); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985); *Weaver v. Reliable Coal Corp.*, 7 BLR 1-486 (1984); see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); Cf. *Church, supra*. Furthermore, contrary to claimant's contention the administrative law judge did not selectively analyze the medical evidence as the administrative law judge fully discussed the medical opinions and his reasons for discounting them. Decision and Order at 3-4; see *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). We therefore hold that the administrative law judge committed no error in his weighing of the medical opinions at Section 718.202(a)(4). As claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the denial of benefits. *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Accordingly, the Decision and Order - Denying Benefits (Upon Remand by the Benefits Review Board) of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge