

BRB No. 06-0574 BLA

TRELLIS T. AYERS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SHAMROCK COAL COMPANY, INCORPORATED)	
)	
Employer-Respondent)	DATE ISSUED: 02/16/2007
)	
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.

Ronald E. Gilbertson (Bell, Boyd and Lloyd PLLC), Washington, D.C., for employer.

Rita Roppolo (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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (04-BLA-5312) 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). Claimant filed his claim for benefits on September 9, 2002. Director's Exhibit 2. The administrative law judge credited claimant with twelve years of coal mine employment¹ pursuant to the parties' stipulation. Decision and Order at 5. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence did not establish the existence of pneumoconiosis or a totally disabling pulmonary or respiratory impairment pursuant to 20 C.F.R. §§718.202(a), 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),(4), and total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant also contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete and credible pulmonary evaluation to substantiate his claim. Employer responds, urging affirmance of the denial of benefits. The Director responds that he met his obligation to provide claimant with a complete and credible 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

¹ The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 3. 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, 1-202 (1989)(*en banc*).

² Because claimant does not challenge the administrative law judge's findings that the existence of pneumoconiosis was not established at 20 C.F.R. §718.202(a)(2), (3), we affirm them. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered six readings of four x-rays.³ Dr. Simpao, who the administrative law judge noted lacks radiological credentials, read the December 19, 2002 x-ray as positive for pneumoconiosis. Director's Exhibit 10. The administrative law judge noted, however, that Dr. Scott, a Board-certified radiologist and B reader, read the same x-ray as negative for pneumoconiosis. Director's Exhibit 26. The administrative law judge additionally considered that Dr. Baker, a B reader, read the April 26, 2003 x-ray as positive for pneumoconiosis, but also considered that Dr. Hayes, a Board-certified radiologist and B reader, read the same x-ray as negative for pneumoconiosis. Director's Exhibit 22; Employer's Exhibit 6. Finally, the administrative law judge considered that Dr. Dahhan, a B reader, read the May 7, 2003 x-ray as negative for pneumoconiosis, and that Dr. Broudy, a B reader, read the January 30, 2004 x-ray as negative for pneumoconiosis. Director's Exhibit 23; Employer's Exhibit 2. Because the negative x-ray readings "constitute[d] the majority of the interpretations," and were "verified by more highly qualified physicians," the administrative law judge found that the x-ray evidence failed to establish the existence of pneumoconiosis. Decision and Order at 13.

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 "may have 'selectively analyzed'" the readings, lack merit. Claimant's Brief at 2. We therefore affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered four medical opinions. Drs. Simpao and Baker diagnosed claimant with pneumoconiosis, while Drs. Dahhan and Broudy concluded that he does not have pneumoconiosis. Director's Exhibits 12, 22, 23; Employer's Exhibits 1-3. The administrative law judge explained that he gave "less probative weight" to Dr. Simpao's diagnosis of coal workers' pneumoconiosis, because the weight of the x-ray evidence did not support a finding of pneumoconiosis, and because Dr. Simpao did not otherwise explain how the results of claimant's examination and objective testing "were used to aid [Dr. Simpao] in diagnosing [c]laimant with coal workers' pneumoconiosis." Decision and Order at 14. Similarly, the administrative law judge discounted Dr. Baker's diagnosis of "Coal Workers' Pneumoconiosis 1/0," because Dr. Baker provided "no other basis for his diagnosis," beyond a discredited x-ray reading and a reference to claimant's history of

³ A seventh x-ray report by Dr. Barrett reviewed the December 19, 2002 x-ray for its film quality only. Director's Exhibit 11.

coal mine dust exposure. Decision and Order at 14; Director's Exhibit 22. The administrative law judge additionally found that although Dr. Baker also diagnosed claimant with hypoxemia and chronic obstructive pulmonary disease (COPD) due to both smoking and coal dust exposure, Dr. Baker did not explain these diagnoses. Decision and Order at 15. By contrast, the administrative law judge found that Dr. Dahhan provided a better reasoned and documented opinion that claimant does not have pneumoconiosis.⁴ He therefore found that Dr. Dahhan's opinion outweighed those of Drs. Simpao and Baker.

Claimant contends that the administrative law judge erred in discounting Dr. Baker's opinion as based on a positive x-ray reading that was "contrary to the [administrative law judge's] findings." Claimant's Brief at 5. Contrary to claimant's contention, the administrative law judge reasonably discounted Dr. Baker's diagnosis of "Coal Workers' Pneumoconiosis 1/0," since it was based on Dr. Baker's positive reading of the April 26, 2003 x-ray, which the administrative law judge found outweighed by the negative reading of a physician with superior qualifications, and because the diagnosis was not otherwise explained. 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 2-10 (6th Cir. 2000). Moreover, the administrative law judge went on to consider Dr. Baker's diagnoses of "legal" pneumoconiosis,⁵ but acted within his discretion in finding that Dr. Baker did not adequately explain his opinion that claimant's hypoxemia and COPD were related to coal dust exposure. See *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993). Claimant additionally contends that the opinions of Drs. Baker and Simpao were documented and reasoned and should not have been discredited. Claimant's Brief at 5. Claimant essentially requests a reweighing of the evidence, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. Substantial evidence supports the administrative law judge's permissible determination that the opinions of Drs. Baker and Simpao were not as well-reasoned as Dr. Dahhan's contrary opinion. Consequently, we affirm the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Claimant contends that, because the administrative law judge discredited Dr. Simpao's December 19, 2002 medical report provided by the Department of Labor, "the

⁴ The administrative law judge accorded less weight to Dr. Broudy's opinion that claimant does not have pneumoconiosis, finding it to be inadequately explained. Decision and Order at 15.

⁵ "Legal" pneumoconiosis includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

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 6. The Director responds that he is required to provide claimant with a complete and credible examination, not one that “trump[s] all other evidence.” Director’s Brief at 1. The Director argues that because the administrative law judge merely accorded less weight to Dr. Simpao’s opinion, there was no violation of the Director’s duty to claimant. Director’s Brief at 1-2.

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).

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 Exhibits 10, 12; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). On the issue of the existence of pneumoconiosis, the administrative law judge found that Dr. Simpao’s diagnosis of “CWP 1/1” was based largely on a positive x-ray reading that the administrative law judge found outweighed by the negative reading of that x-ray by a physician with superior radiological credentials, and was not otherwise explained by Dr. Simpao. Decision and Order at 13, 14. 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. Director’s Exhibit 22 at 4. Additionally, the administrative law judge chose to give greater weight to the “better reasoned and better documented” opinion of Dr. Dahhan. Decision and Order at 15-16; *see Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999)(explaining that “ALJ’s may evaluate the relative merits of conflicting physicians’ opinions and choose to credit one . . . over the other”). Because the administrative law judge merely found Dr. Simpao’s opinion outweighed on the issue of the existence of pneumoconiosis, there is no merit to claimant’s argument that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible 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. *Anderson*, 12 BLR at 1-112; *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*). Consequently, we need not address claimant’s arguments

concerning the administrative law judge's finding that claimant did not establish that he is totally disabled.

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