

BRB No. 07-0449 BLA

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| P.H. |) | |
| (Widow of R.H.) |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| SHAMROCK COAL COMPANY, INCORPORATED |) | DATE ISSUED: 02/29/2008 |
| |) | |
| 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 – Denial of Benefits of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Bell, Boyd & Lloyd LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (06-BLA-5150) of Administrative Law Judge Donald W. Mosser on a survivor’s claim¹ filed pursuant to the

¹ Claimant is the widow of the miner who died on January 8, 2004. Director’s Exhibit 10. The miner had filed a claim for benefits on December 23, 1986, which was finally denied by Administrative Law Judge Robert L. Hillyard on January 19, 1990. Director’s Exhibit 1. Subsequent to the miner’s death, claimant filed a survivor’s claim

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 initially credited the parties' stipulation that the miner worked in qualifying coal mine employment for thirty 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) and that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find pneumoconiosis established by x-ray and medical opinion evidence under Sections 718.202(a)(1) and (a)(4) and in failing to find that pneumoconiosis substantially contributed to the miner's death pursuant to Section 718.205(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating his intention not to participate in this appeal.²

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,³ 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'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In challenging the administrative law judge's finding that claimant failed to establish pneumoconiosis at Section 718.202(a)(1), claimant argues that the administrative law judge erred by placing substantial weight on the numerical superiority of the negative x-ray interpretations and by relying exclusively on the qualifications of the physicians providing those x-ray interpretations. Claimant contends that the

for benefits on October 7, 2004, which is the subject of the instant appeal. Director's Exhibit 2.

² We affirm the administrative law judge's findings with respect to length of coal mine employment, and that claimant failed to establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(3) since these determinations were 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 2, 5.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 4.

administrative law judge is not required either to defer to a physician with superior qualifications or to accept as conclusive the numerical weight of x-ray interpretations. Claimant further contends that the administrative law judge “may have selectively analyzed” the x-ray evidence.

Contrary to claimant’s argument, where x-ray evidence is in conflict, consideration *shall* be given to the readers’ radiological qualifications. 20 C.F.R. §718.202(a)(1). In this case, the administrative law judge properly found that the x-ray evidence of record was insufficient to establish pneumoconiosis since all of the x-ray interpretations submitted in this survivor’s claim, which were provided by Dr. Wiot, a dually-qualified radiologist, and Dr. Fino, a B-reader, were interpreted as negative for pneumoconiosis. 20 C.F.R. §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); *Langerud v. Director, OWCP*, 9 BLR 1-101, 1-103 (1986); Decision and Order at 5; Director’s Exhibits 17, 18. Accordingly, we affirm the administrative law judge’s determination that claimant failed to establish pneumoconiosis pursuant to Section 718.202(a)(1). 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).

Claimant’s contention that the administrative law judge “may have selectively analyzed” the x-ray evidence is also rejected. 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).

In challenging the administrative law judge’s determination pursuant to Section 718.202(a)(4), claimant argues that the administrative law judge erred in failing to credit the medical opinion of Dr. Vaezy, who diagnosed coal workers’ pneumoconiosis. Claimant additionally contends, pursuant to 20 C.F.R. §718.104(d), that the administrative law judge erred in failing to accord determinative weight to the opinion of Dr. Vaezy based on his status as the miner’s treating physician⁴ and the fact that he was the only physician who examined the miner prior to his death.

⁴ Section 718.104(d)(5) provides in pertinent part that:

[i]n appropriate cases, the relationship between the miner and his treating physician may constitute substantial evidence in support of the adjudication officer’s decision to give that physician’s opinion controlling weight, provided that the weight given to the opinion of a miner’s treating

Contrary to claimant's argument, however, the administrative law judge did not err in according less weight to the opinion of Dr. Vaezy, despite his status as the miner's treating physician. In assessing the credibility of Dr. Vaezy's opinion, the administrative law judge accorded less weight to Dr. Vaezy's opinion because he stated that the miner "seemed to have coal workers' pneumoconiosis" in a one-paragraph letter dated November 9, 2004, without providing any reasoning for his conclusion. Additionally, the administrative law judge found the probative value of Dr. Vaezy's opinion diminished because Dr. Vaezy had not diagnosed pneumoconiosis in his treatment records. Accordingly, the administrative law judge rationally found that Dr. Vaezy's opinion was not well-reasoned and therefore entitled to little weight. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-647-49 (6th Cir. 2003) (the opinions of treating physicians get the deference they deserve based on their power to persuade); *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 fact-finder should decide whether physician's report is sufficiently reasoned and documented); *Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-117 (6th Cir. 1995); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); Decision and Order at 6.

Because the administrative law judge rationally determined that the opinion of Dr. Vaezy was undermined because it was neither well-reasoned nor well-documented, Dr. Vaezy's opinion was not entitled to determinative weight based merely on Dr. Vaezy's status as the miner's treating physician. 20 C.F.R. §718.104(d)(5); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003) (noting that Section 718.104(d) does not call for automatic acceptance of treating physician's opinion); *Williams*, 338 F.3d at 510-511, 22 BLR at 2-641-642; *Groves*, 277 F.3d at 834, 22 BLR at 2-326. Hence, we affirm the administrative law judge's determination to accord diminished weight to the opinion of Dr. Vaezy. Because claimant has not otherwise challenged the administrative law judge's credibility determinations, we affirm the administrative law judge's determination that claimant failed to establish pneumoconiosis by medical opinion evidence under Section 718.202(a)(4) as this finding is rational, contains no reversible error, and is supported by substantial evidence. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation... .

20 C.F.R. §718.104(d)(5).

Further, because claimant has failed to satisfy her burden of establishing pneumoconiosis, a requisite element of entitlement under Part 718, we affirm the administrative law judge's finding that entitlement to benefits is precluded.⁵ 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*).

Accordingly, the Decision and Order – Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁵ Claimant's failure to affirmatively establish pneumoconiosis, a requisite element of entitlement, obviates the need to address her argument as to whether pneumoconiosis was a substantially contributing cause of the miner's death at Section 718.205(c)(2). *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993); see *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).