

BRB No. 02-0472 BLA

WILLIAM R. WELLS)
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 Claimant-Petitioner)
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 v.)
)
 U.S. STEEL MINING COMPANY)
)
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,))
 UNITED STATES DEPARTMENT)
 OF LABOR)
)
 Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Ray E. Ratliff, Jr., Charleston, West Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West Virginia, for employer.

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

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PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (00-BLA-0877) of Administrative Law Judge Michael P. Lesniak (the administrative law judge) 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).¹ The administrative law judge credited claimant with at least ten years of coal mine employment. The administrative law judge, considering all the evidence of record on the merits of the claim, found that the evidence fails to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4) and pursuant to *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). The administrative law judge further determined that since claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement under 20 C.F.R. Part 718, analysis of the remaining elements of entitlement was unnecessary. Accordingly, benefits were denied. On appeal, claimant contends that the x-ray and medical opinion evidence establishes the existence of pneumoconiosis and that the administrative law judge erred in finding to the contrary. Claimant also asserts that Dr. Gaziano's opinion establishes that claimant is totally disabled due to pneumoconiosis. Employer responds, and urges the Board to affirm the administrative law judge's denial of benefits on the merits of the claim as it is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has not filed a brief in the appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that the pneumoconiosis arose from his coal mine employment, and that he is totally disabled due to a respiratory or pulmonary impairment arising out of coal mine employment. 20 C.F.R. §§718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Failure to establish any element of entitlement will preclude a finding of entitlement to benefits.

Claimant contends that the administrative law judge erred in finding that the x-ray

¹The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

evidence is insufficient to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1).² The administrative law judge found:

At best, the claimant has shown that the x-rays are in equipoise as to the existence of medical pneumoconiosis, since B-readers have read them as both positive and negative, and the only dually-qualified physician read an x-ray as negative. Therefore, the x-ray evidence does not establish pneumoconiosis under [20 C.F.R.] §718.202(a)(1).

Decision and Order at 8. Claimant argues that the positive interpretations of the July 9, 1999 x-ray rendered by Drs. Gaziano and Ranavaya are “more significant” because these physicians possess impressive additional non-radiological credentials and should have been accorded greater weight by the administrative law judge. Claimant’s Brief at 3-4. Claimant also argues that Dr. Castle’s opinion is unreasoned and should have been discredited by the administrative law judge. Dr. Castle stated:

Although Dr. Gaziano and Dr. Ranavaya both felt the x-ray was positive, they also considered the fact that the x-ray may be negative. Hence the classification of 1/0.

Employer’s Exhibit 1. Claimant argues that Dr. Castle’s statement is contrary to the regulation at 20 C.F.R. §718.202(a)(1) under which the 1/0 classification is accepted as evidence of pneumoconiosis.

Claimant’s contentions lack merit. The administrative law judge properly considered the quantitative and qualitative weight of the x-ray evidence, including the physicians’ radiological qualifications, in determining that this evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). Further, the Board has held that a physician’s non-

²The record contains three interpretations of Dr. Gaziano’s x-ray dated July 9, 1999: Dr. Gaziano, a B reader, read the x-ray as positive 1/0 qq; Dr. Ranavaya, a B reader, read the x-ray as positive 1/0 pq, and Dr. Navani, a B reader and Board-certified radiologist, read the x-ray as negative. Director’s Exhibits 15 - 17. The record also contains the negative reading by Dr. Castle, a B reader, of his May 22, 2000 x-ray. Employer’s Exhibit 1.

radiological qualifications are not relevant to the administrative law judge's weighing of the x-ray evidence at 20 C.F.R. §718.202(a)(1). *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991). The administrative law judge duly noted that Dr. Castle read as negative the May 22, 2000 x-ray. Decision and Order at 1. Claimant argues that the administrative law judge should have discredited, as contrary to the regulations, Dr. Castle's statement that "[a]lthough Dr. Gaziano and Dr. Ranavaya both felt the x-ray was positive, they also considered the fact that the x-ray may be negative. Hence the classification of 1/0." Employer's Exhibit 1. The administrative law judge, however, was not required to address this opinion at 20 C.F.R. §718.202(a)(1). Compare 20 C.F.R. §718.202(a)(1) with 20 C.F.R. §718.202(a)(4). Moreover, the regulations accept a classification of 1/0 as evidence of pneumoconiosis, see 20 C.F.R. §§718.201, 718.202(a)(1), and Dr. Castle's statement does not contravene this fact. Based on the foregoing, we hold that substantial evidence supports the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), and we affirm that finding.

Claimant next contends that the administrative law judge erred in finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The relevant medical opinion evidence on the issue of the existence of pneumoconiosis in this case consists of the medical reports of Drs. Gaziano and Castle. Dr. Gaziano, in his medical report dated July 13, 1999, diagnosed coal workers' pneumoconiosis which he attributed to claimant's coal mine work. He also found a moderate impairment and indicated that claimant was not able to perform his former coal mine work. Dr. Gaziano was then asked to indicate the extent to which claimant's diagnosis contributed to the impairment. He indicated, "N/A." Director's Exhibit 13. He also added, under the section titled "Non-Cardiopulmonary Diagnosis," "Back back (sic) unable to exercise or work." *Id.* Dr. Castle, in his report dated October 17, 2000, found that claimant does not suffer from coal workers' pneumoconiosis and "does not have the physical findings, the radiographic findings, the physiologic findings, or the arterial blood gas findings to indicate the presence of that disease process." Employer's Exhibit 1. Dr. Castle further stated:

It is my opinion that Mr. Wells probably is disabled as a result of tobacco smoke induced chronic airway obstruction. This would preclude him from performing his usual coal mining employment duties. It is my opinion with a reasonable degree of medical certainty that Mr. Wells is not permanently and totally disabled as a result of coal workers' pneumoconiosis or as a result of any other process arising from his coal mine employment.

Even if he were found to have radiographic evidence of simple coal workers' pneumoconiosis, which in my opinion he does not, he would still not be disabled by that process. My opinion is not predicated upon his having a normal or negative x-ray. It is rather, however, predicated upon his not having

the physiologic impairment associated with that disease process.

Id.

Of the two medical opinions of record, only Dr. Gaziano's supports claimant's burden at 20 C.F.R. §718.202(a)(4).³ The administrative law judge discredited Dr. Gaziano's report as follows:

³Claimant contends that Dr. Castle's diagnosis of "chronic airway obstruction" constitutes proof of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) and disabling pneumoconiosis at 20 C.F.R. §718.204(c). The administrative law judge found that Dr. Castle's opinion is insufficient to establish that claimant *does not* have pneumoconiosis and that his impairment *is not* due to pneumoconiosis because "Dr. Castle merely looked for the signs and symptoms of medical pneumoconiosis, that is, fibrosis in the lung." Decision and Order at 8. Claimant argues that the administrative law judge correctly ruled (1) that Dr. Castle's opinion was limited to medical pneumoconiosis as distinguished from legal pneumoconiosis, and (2) that Dr. Castle's disability causation opinion must be given less weight. Claimant's Brief at 14. Dr. Castle opined that claimant probably is disabled due to tobacco smoke induced chronic airway obstruction. Employer's Exhibit 1. Because Dr. Castle did not diagnose pneumoconiosis, medical or legal, and did not attribute any respiratory or pulmonary condition to pneumoconiosis or coal mine employment, we need not further address claimant's arguments regarding the administrative law judge's weighing of Dr. Castle's medical opinion.

Dr. Gaziano did not make a finding of pneumoconiosis other than by x-ray. He did not relate the wheezes on examination or the changes on the pulmonary function study to pneumoconiosis or coal dust exposure. In fact, he concluded that the claimant's totally disabling pulmonary impairment was not related to pneumoconiosis. In this way, Dr. Gaziano's opinion does not provide a basis or rationale for going beyond the weighing of the x-ray readings. Therefore, I find that Dr. Gaziano's opinion is insufficient to establish pneumoconiosis under [20 C.F.R.] §718.202(a)(4), even without Dr. Castle's opinion to weigh against it.

Decision and Order at 8. While the record shows that Dr. Gaziano interpreted his x-ray as showing "cwp / 1/0" and that Dr. Gaziano did not relate claimant's moderate impairment to pneumoconiosis, he did diagnose "coal workers' pneumoconiosis" which he attributed to "coal mining." Director's Exhibit 13. Contrary to the administrative law judge's determination, these findings by Dr. Gaziano support a finding of the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(4). We recognize that an administrative law judge may determine, within his discretion, that a medical report is merely a restatement of an x-ray interpretation and, as such, is insufficient to establish pneumoconiosis at 20 C.F.R. §718.202(a)(4). *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993). In this case, however, Dr. Gaziano performed a medical examination and conducted several objective tests including an x-ray, pulmonary function study and blood gas study, and based on the results of this examination and testing, diagnosed coal workers' pneumoconiosis due to claimant's coal mining. *See Director's Exhibit 13*. We thus hold that the record does not support the administrative law judge's determination that Dr. Gaziano's opinion "does not provide a basis or rationale for going beyond the weighing of the x-ray readings" and that Dr. Gaziano's opinion is therefore insufficient to establish pneumoconiosis under 20 C.F.R. §718.202(a)(4). Decision and Order at 8.

Notwithstanding the administrative law judge's error in weighing Dr. Gaziano's medical opinion at 20 C.F.R. §718.202(a)(4), he properly noted that Dr. Gaziano did not relate claimant's moderate impairment to pneumoconiosis. Decision and Order at 4, 8. The record shows that Dr. Gaziano, when asked to indicate the extent to which his diagnosis, in this case "coal workers' pneumoconiosis," contributed to claimant's impairment, indicated, "N/A." Director's Exhibit 13. Dr. Gaziano added, under the section titled "Non-Cardiopulmonary Diagnosis," "Back back (sic) unable to exercise or work." *Id.* The only other medical opinion of record is that rendered by Dr. Castle. Dr. Castle found that claimant "probably is disabled as a result of tobacco smoke induced chronic airway obstruction... [Claimant] is not permanently and totally disabled as a result of coal workers' pneumoconiosis or as a result of any other process arising from his coal mine employment." Employer's Exhibit 1. Dr. Castle found that claimant did not have coal workers' pneumoconiosis but added that even if he had pneumoconiosis, he is not disabled by it. *Id.* It

is claimant's burden to establish disability causation under 20 C.F.R. §718.204(c).⁴ The regulation at C.F.R. §718.204(c)(1) provides:

A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in [20 C.F.R.] §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

- (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
- (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

⁴The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now found at 20 C.F.R. §718.204(b), while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

20 C.F.R. §718.204(c)(1). Further, the regulation at 20 C.F.R. §718.204(c)(2) provides, in pertinent part, that the cause or causes of a miner's total disability shall be established by means of a physician's documented and reasoned medical report. 20 C.F.R. §718.204(c)(2). The United States Court of Appeals for the Fourth Circuit held, in *Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990), that claimant is required to establish that his pneumoconiosis is a contributing cause of his total disability.⁵ In the instant case, neither Dr. Gaziano nor Dr. Castle links claimant's respiratory impairment or disability to pneumoconiosis or coal mine employment. *See* Director's Exhibit 13, Employer's Exhibit 1. Consequently, these medical opinions are insufficient to carry claimant's burden to establish that pneumoconiosis is either a substantially contributing cause of his disability under 20 C.F.R. §718.204(c)(1) or a contributing cause of his disability under *Robinson*. Claimant cannot, therefore, establish disability causation, an essential element of entitlement under 20 C.F.R. Part 718. 20 C.F.R. §718.204(c); *Trent, supra*; *Perry, supra*. We thus affirm the administrative law judge's denial of benefits in the instant case.

⁵The instant case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Accordingly, we affirm the administrative law judge's Decision and Order - Denying Benefits.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge