

BRB No. 04-0376 BLA

WALDON J. COLLETT, JR. )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 HELTON TRUCKING COMPANY, )  
 INCORPORATED )  
 )  
 and )  
 )  
 KENTUCKY EMPLOYERS' MUTUAL, )  
 INCORPORATED )  
 )  
 Employer-Respondent )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest )

DATE ISSUED: 01/12/2005

DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

Paul E. Jones (Jones, Waltes, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-5256) of Administrative Law Judge Daniel J. Roketenetz issued 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). The administrative law judge found that

claimant established twenty years of coal mine employment. The administrative law judge further found the evidence insufficient to establish either the existence of pneumoconiosis or total disability. Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis and total disability at 20 C.F.R. §§718.202(a)(1), (4) and 718.204(b). Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this 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 supported by substantial evidence, are rational, and are 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

On appeal, claimant contends that the administrative law judge erred in finding that the x-ray evidence did not establish the existence of pneumoconiosis by relying on the negative interpretations of better qualified x-ray readers and the numerical superiority of the negative interpretations. Further, claimant contends that the administrative law judge must consider and weigh all relevant medical evidence to ascertain whether claimant has established the existence of pneumoconiosis.

In finding that the x-ray evidence did not establish the existence of pneumoconiosis, the administrative law judge credited the weight of the negative x-ray readings by the better qualified physicians. This was proper. 20 C.F.R. §718.202(a)(1); *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. 1993). Moreover, claimant's argument that the administrative law judge must weigh all relevant medical evidence to determine whether the preponderance of the evidence establishes the existence of pneumoconiosis is without merit. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). Claimant's arguments are, therefore, rejected and the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis by x-ray evidence is affirmed.

Claimant next contends that the administrative law judge erred in rejecting the opinions of Drs. Baker and Hussain, diagnosing the existence of pneumoconiosis, as unreasoned. In finding that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), the administrative law judge rejected Dr. Baker's diagnosis of pneumoconiosis because Dr. Baker's diagnosis of pneumoconiosis was based solely on claimant's positive x-ray and his history of coal dust exposure. The administrative law judge, therefore, permissibly found that Dr. Baker's opinion was merely a restatement of an x-ray reading, and thus an insufficiently reasoned opinion. *See Cornett*, 227 F.3d 569, 22 BLR 2-107; *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985); Director's Exhibit 9.<sup>1</sup> The administrative law judge also found Dr. Hussain's opinion of pneumoconiosis to be insufficiently reasoned because Dr. Hussain relied upon a positive x-ray reading and a history of coal dust exposure, but failed to document the duration and extent of claimant's coal mine employment. This was reasonable. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*).

Conversely, the administrative law judge found that the opinions of Drs. Broudy and Dahhan, who concluded that claimant did not have pneumoconiosis, to be well-reasoned and well-documented. Decision and Order at 9. The administrative law judge permissibly placed great weight on Dr. Broudy's opinion because it was based on, in addition to claimant's negative x-ray, diagnostic findings which showed only a slight restrictive impairment and slight resting hypoxemia. *Id.* Similarly, the administrative law judge accorded greater weight to Dr. Dahhan's opinion because he found it to be based on normal clinical examination of the chest, normal arterial blood gas study, and normal pulmonary function study, in addition to a negative chest x-ray. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark*, 12 BLR 1-149, 1-155; *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge reasonably concluded, therefore, that the medical opinion evidence did not establish the existence of pneumoconiosis. Thus, contrary to claimant's argument, the administrative law judge properly found that the opinions of Drs. Broudy and Dahhan were entitled to greater weight than the opinions of Drs. Baker and Hussain. *Id.* Accordingly, we affirm the administrative law judge's finding that the

---

<sup>1</sup> In his medical report, Dr. Baker diagnosed chronic bronchitis – based on history and states that any pulmonary impairment claimant has is caused at least in part to coal dust exposure. Dep. Exhibit 1. On deposition, however, Dr. Baker stated that his finding of pneumoconiosis was based solely on x-ray and that if he had not had a positive x-ray he would not have found that the claimant had pneumoconiosis or any occupational lung disease. Employer's Exhibit at 7. Dr. Baker further stated that claimant's pulmonary function studies and blood gas studies were normal, so that on the basis of the AMA guidelines he would not have any pulmonary impairment. Employer's Exhibit at 10.

medical opinion evidence failed to establish the existence of pneumoconiosis. *See White v. New White Coal Co.*, 23 BLR 1-1 (2004).

Because claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we must affirm the administrative law judge's denial of benefits. We need not, therefore, address claimant's argument concerning total disability. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-5.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge