

BRB No. 06-0575 BLA

RANDY NAPIER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SHAMROCK COAL COMPANY,)	
INCORPORATED, C/O ACORDIA)	
EMPLOYER'S SERVICE)	
)	DATE ISSUED: 01/26/2007
Employer/Carrier-)	
Respondents)	
)	
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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Bell, Boyd & Loyd PLLC), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (04-BLA-5131) of Administrative Law Judge Thomas F. Phalen, Jr., with respect to 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 credited

claimant with twenty-two years of coal mine employment¹ and considered the claim, filed on March 5, 2001, pursuant to the regulations set forth in 20 C.F.R. Part 718. The administrative law judge determined that the evidence of record was insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total disability under 20 C.F.R. §718.204(b)(2). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's findings that the evidence of record is insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1) and (a)(4) and total disability under Section 718.204(b)(2)(iv). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not submit a response brief on the merits of this appeal.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 supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act 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 pursuant to 20 C.F.R. Part 718, claimant must establish 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. *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant initially argues that the administrative law judge's finding that the x-ray evidence of record is insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1) must be vacated, as the administrative law judge erred in relying upon the physicians' qualifications and the numerical superiority of the negative x-ray

¹ The administrative law judge properly found that this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as claimant was last employed in the coal mine industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Decision and Order at 3; Director's Exhibit 3.

² The parties do not challenge the administrative law judge's decision to credit claimant with twenty-two years of coal mine employment, or his findings pursuant to 20 C.F.R. §§718.202(a)(2)-(a)(3), and 718.204(b)(2)(i)-(iii). These findings are, therefore, affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

interpretations. Claimant also contends that the administrative law judge selectively analyzed the x-ray evidence. These allegations of error are without merit. Pursuant to Section 718.202(a)(1), the administrative law judge properly found that the positive x-rays for pneumoconiosis, dated June 13, 2001 and May 29, 2002, by physicians who did not have special radiological qualifications, were countered by two negative readings by physicians who were both B readers and Board-certified radiologists. Director's Exhibits 10, 11, 26; Employer's Exhibit 4. The administrative law judge found that all the other readings were negative and were by B-readers and, based on a proper qualitative analysis of the conflicting x-ray readings, found that claimant did not establish the existence of pneumoconiosis based upon the preponderance of negative readings performed by physicians with superior qualifications. Decision and Order at 10; Director's Exhibits 9, 10, 15; *see Staton v. Norfolk & Western Railroad 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); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Accordingly, we reject claimant's argument that the administrative law judge selectively analyzed the x-ray evidence and affirm his finding that claimant did not establish the existence of pneumoconiosis under Section 718.202(a)(1).

Pursuant to Section 718.202(a)(4), the administrative law judge considered the opinions in which Drs. Baker and Hussain diagnosed pneumoconiosis, and the contrary opinions of Drs. Dahhan and Broudy. The administrative law judge also considered claimant's treatment notes that documented that claimant was treated for seizures, gastric lymphoma, neck and arm pain and a ruptured disc. Claimant specifically argues that the administrative law judge erred in rejecting the opinions of Drs. Baker and Hussain, because they were "based merely upon their x-ray interpretations," even though each doctor had conducted a physical examination and performed a blood gas and pulmonary function study. Claimant's Brief at 5. Additionally, claimant contends that the administrative law judge "appears to have" interpreted medical data and substituted his own conclusion for that of a physician. *Id.* Claimant's arguments are without merit. Contrary to claimant's assertion, although the administrative law judge acknowledged that the opinions of Drs. Baker and Hussain were well documented, Decision and Order at 11, he permissibly gave less weight to their opinions because he found the physicians gave no basis for their diagnosis beyond a reference to claimant's coal mine employment history and their own positive x-ray readings, which were outweighed by negative readings of physicians with superior qualifications. Decision and Order at 11; *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-648-49 (6th Cir. 2003); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). The administrative law judge reasonably accorded greater weight to the contrary opinions of record because he found they were well documented and reasoned (emphasis added). *Id.* We affirm, therefore, the administrative law judge's determination that the medical opinion evidence does not support a finding of pneumoconiosis pursuant to Section 718.202(a)(4).

Because substantial evidence supports the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1), (4), a necessary element of entitlement in a miner's claim under Part 718, we affirm the denial of benefits. *Anderson*, 12 BLR at 1-112; *Perry*, 9 BLR at 1-2. 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 – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge