BRB No. 95-2251 BLA

JIMMY HUNT )
)
Claimant-Petitioner )
)
v. )
)
UNIT COAL CORPORATION )
) DATE ISSUED:
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 of Edith Barnett, Administrative Law Judge, United States Department of Labor.

Jimmy Hunt, Stanville, Kentucky, *pro se*.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH, DOLDER, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant[1], without the assistance of counsel, appeals the Decision and Order (95-BLA-0263) of Administrative Law Judge Edith Barnett denying benefits 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 accepted employer's stipulation that claimant has "at least"

[1]Claimant is Jimmy Hunt, the miner, who filed a claim for benefits on February 28, 1994. Director's Exhibit 1.

ten years of qualifying coal mine employment, Decision and Order at 2, and found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

Claimant generally challenges the denial of benefits. Employer responds, urging affirmance, and the Director, Office of

Workers' Compensation Programs (the Director), has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Pursuant to Section 718.202(a)(1), the administrative law judge considered thirty interpretations of nine x-rays, Director's Exhibits 24-43, 55-58, Employer's Exhibits 1-2, and found that none of the four positive interpretations were rendered by physicians who are both B-readers and board certified radiologists, while eleven of the negative interpretations were by physicians so qualified. Director's Exhibits 24-29, 33-38, 43, 56; Decision and Order at 2. The administrative law judge assigned more weight to the readings of physicians who are dually qualified and found that the x-ray evidence is "overwhelmingly negative for pneumoconiosis." Decision and Order at 5-6.

Inasmuch as the administrative law judge may assign greater weight to the interpretations of physicians with superior qualifications, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987), and may rely on the numerical superiority of the evidence, *see Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990), we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). We note that in this case arising within the appellate jurisdiction of the United States Court of Appeals for the Sixth Circuit, the administrative law judge considered the earlier positive readings as well as the qualitative differences of the readers, and the x-ray interpretations do not appear to be unduly repetitious. *See Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993).

We affirm the administrative law judge's findings that Section 718.202(a)(2)-(3) is unavailable to claimant inasmuch as the record contains no autopsy or biopsy evidence and the presumptions set forth at Section 718.202(a)(3) are inapplicable in this living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. *See* 20 C.F.R. §§718.202(a)(2), (3); 718.304, 718.305(e), 718.306; Director's Exhibit 1.

Pursuant to Section 718.202(a)(4), the administrative law judge found that the opinions of Drs. Hyden and Sundaram diagnosing pneumoconiosis are too conclusory and poorly reasoned to be probative and persuasive. Decision and Order at 6; Director's Exhibits 14, 17. The administrative law judge noted that neither physician administered arterial blood gas studies, that Dr. Sundaram did not administer a pulmonary function study, and that the pulmonary function study performed for Dr. Hyden was invalidated and followed by normal studies. Decision and Order at 6. The administrative law judge then found that the opinions of the remaining five physicians are "based on much more information and more careful analysis," and concluded that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Decision and Order at 6; Director's Exhibits 20, 21, 23, 57; Employer's Exhibits 3, 4.

Whether a physician's opinion is sufficiently documented and reasoned is a credibility determination to be made by the trier of fact; *see Tennessee Consolidated Coal Co. v. Crisp*, 866 F.2d 179, 12 BLR 2-121 (6th Cir. 1989); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). Inasmuch as the administrative law judge, may assign less weight to opinions which she determines are unreasoned, *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988), and may rely on the numerical superiority of the evidence, *see Edmiston*, *supra*, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Further, because claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the denial of benefits.[2] *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

[2]The administrative law judge also properly found that claimant failed to establish total respiratory disability pursuant to Section 718.204(c) as there is no qualifying pulmonary function study or arterial blood gas study evidence and no medical opinions which diagnose total respiratory disability. Director's Exhibits 9-14, 17, 20, 21, 23, 57; Employer's Exhibits 3, 4.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge