BRB No. 05-0906 BLA

CHESTER C. CRABTREE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ROSS COAL COMPANY	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	DATE ISSUED: 07/24/2006
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order – Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Chester C. Crabtree, Pine Knot, Kentucky, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order – Denying Benefits (04-BLA-5235) of Administrative Law Judge Rudolf L. Jansen 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 credited claimant with seven years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge noted that claimant had requested a decision on the record, and that employer did not object to this request. The administrative law judge found the evidence insufficient to establish both the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and total disability pursuant to 20 C.F.R. §718.204(b). Consequently, benefits were denied. Employer responds to claimant's *pro se* appeal, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not submitted a brief on appeal.

In an appeal by a claimant filed without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

We first consider the administrative law judge's findings regarding the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). As the administrative law judge noted, the record contains seven interpretations of three x-rays. Claimant's 2002 film was read by both Dr. Baker, who is neither a B reader nor a Board-certified radiologist, and by Dr. Poulos, a B reader and Board-certified radiologist, as negative for pneumoconiosis. Director's Exhibits 12, 30. Dr. Sargent re-read this film for quality only. Director's Exhibit 13. Claimant's 2003 film was read by both Dr. Dahhan, a B reader, and Dr. Wiot, a B reader and Board-certified radiologist, as negative for pneumoconiosis. Director's Exhibits 25, 29. Dr. Forehand, a B reader, read claimant's 2004 film as positive for pneumoconiosis, Claimant's Exhibit 1, and Dr. Kendall, a B reader and Board-certified radiologist, read this same x-ray as negative for pneumoconiosis. Employer's Exhibit 2.

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[1] Susie Davis, with the Kentucky Black Lung Association of Pikeville, Kentucky, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Ms. Davis is not representing claimant on appeal. *See* Order issued August 23, 2005; *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

The administrative law judge rationally accorded the greatest probative weight to the readings by the physicians with the superior qualifications, and therefore found the x-ray evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Thus, we affirm the administrative law judge's finding. *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); *Staton v. Norfolk & Western Railroad Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995).

The administrative law judge also found that the existence of pneumoconiosis cannot be established pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3). As the administrative law judge properly found, the record does not contain any biopsy evidence, or any evidence of complicated pneumoconiosis in this living miner's claim filed in 2002. Accordingly, we affirm the administrative law judge's finding that the existence of pneumoconiosis is not established pursuant to Section 718.202(a)(2) and (a)(3).

The administrative law judge next considered whether the medical opinion evidence of record established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[2] The administrative law judge accorded "great probative weight" to Dr. Dahhan's opinion of no

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[2] The record contains the medical reports from four physicians. Based on a 1982 examination of claimant, Dr. Baker, whose credentials are not contained in the record, diagnosed COPD, moderate hypoxemia and chronic bronchitis. Dr. Baker described the etiology for all of these diagnoses as "cigarette smoking/? coal dust exposure." Director's Exhibit 12. On a form attached to Dr. Baker's opinion, he indicated that claimant does not have an occupational lung disease caused by his coal mine employment. Director's Exhibit 12. Dr. Forehand, who is Board-certified in Pediatric Medicine, Allergy and Immunology, and is Board-eligible in Pediatric Pulmonary Medicine, examined claimant and wrote a report in 2004. He diagnosed coal workers' pneumoconiosis, chronic bronchitis. Claimant's Exhibit 1. Dr. Branscomb, who is Board-certified in Internal Medicine, reviewed claimant's medical records and opined that claimant has an obstructive pulmonary disease that is not "in any way caused, aggravated by, or significantly influenced by dust exposure." Employer's Exhibit 1. After reviewing additional evidence, Dr. Branscomb opined that claimant had no clinical or legal coal workers' pneumoconiosis. In addition, he opined that any chronic pulmonary disease claimant has is the result of cigarette smoking and was neither caused nor aggravated by coal mine dust. Employer's Exhibit 1. Dr. Dahhan, who is Board-certified in Internal Medicine and Pulmonary Disease, examined claimant in 2003 and stated that he found insufficient objective findings to justify a diagnosis of coal workers' pneumoconiosis. He also stated that claimant has "no evidence" of pulmonary impairment or disability caused by, related to, or aggravated by the inhalation of coal dust. Instead, Dr. Dahhan opined that claimant's respiratory impairment results from his smoking history. Director's Exhibit 25.

pneumoconiosis because of his "expertise in the area of pulmonary medicine." Decision and Order at 11. The administrative law judge found Dr. Branscomb's opinion of no pneumoconiosis to be reasoned and documented and noted that Dr. Branscomb is "highly respected for his knowledge in the area of pulmonary disease." *Id.* The administrative law judge accorded less weight to Dr. Forehand's opinion diagnosing pneumoconiosis, finding that the physician "offered no explanation to support his conclusion, other than to merely list his diagnosis and offer a one-paragraph cover letter repeating his diagnosis in a narrative form," and because Dr. Forehand's credentials are not specific to the treatment of pulmonary disease.[3] *Id.* Having accorded greatest weight to the opinions of Drs. Dahhan and Branscomb the administrative law judge found that the preponderance of the evidence does not satisfy claimant's burden to establish the existence of pneumoconiosis at Section 718.202(a)(4). *Id.* at 12.

We affirm the administrative law judge's reliance on the opinions of Drs. Branscomb and Dahhan based on their superior pulmonary credentials, which the administrative law judge reasonably found to be most relevant to evaluating claimant's respiratory and pulmonary condition. *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). We therefore affirm the administrative law judge's finding that claimant has not established the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

In view of our affirmance of the administrative law judge's finding that claimant has not established the existence of pneumoconiosis pursuant to Section 718.202, one of the essential elements of entitlement pursuant to Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we affirm the administrative law judge's denial of benefits.

[3] The administrative law judge noted that Dr. Baker's opinion, Director's Exhibit 12, does not assist claimant in establishing the existence of pneumoconiosis. The administrative law judge did not specifically state what weight he accorded this opinion. Decision and Order 10-11.

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge