

BRB No. 06-0109 BLA

DANNY STEVENS )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 MOUNTAIN CLAY, INCORPORATED ) DATE ISSUED: 07/26/2006  
 )  
 and )  
 )  
 JAMES RIVER COAL COMPANY )  
 )  
 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 – Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer and carrier.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (2004-BLA-5476) of Administrative Law Judge Joseph E. Kane 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 credited claimant with 19.25 years of qualifying coal mine employment, and adjudicated this claim, filed on August 19, 2002, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the weight of the evidence was insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's weighing of the evidence in finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1), or total respiratory disability pursuant to Section 718.204(b).<sup>1</sup> Claimant alternatively asserts that the Director, Office of Workers' Compensation Programs (the Director), failed to provide claimant with a complete, credible pulmonary evaluation as required pursuant to 30 U.S.C. §923(b), 20 C.F.R. §725.406(a), because the administrative law judge discounted the opinion of Dr. Simpaio. Employer responds, urging affirmance of the denial of benefits. The Director has filed a limited response, urging the Board to reject claimant's argument that the Director failed to provide claimant with a pulmonary examination that complies with the requirements of Section 413(b) of the Act.<sup>2</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>3</sup> 33 U.S.C. §921(b)(3), as incorporated by 30

---

<sup>1</sup> Although claimant refers to the provisions at 20 C.F.R. §718.204(c), *see* Claimant's Brief at 4-5, under the amended regulations, total respiratory or pulmonary disability is established pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv).

<sup>2</sup> We affirm, as unchallenged on appeal, the administrative law judge's finding with regard to the length of claimant's coal mine employment and his finding that the evidence of record did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4). *See Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>3</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mine industry in the Commonwealth of Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Claimant initially challenges the administrative law judge’s weighing of the x-ray evidence of record at Section 718.202(a)(1), arguing that the administrative law judge “relied almost solely on the qualifications of the physicians providing the x-ray interpretations,” “placed substantial weight on the numerical superiority of x-ray interpretations,” and “may have selectively analyzed” the evidence. Claimant’s Brief at 3. Contrary to claimant’s arguments, however, we can discern no error in the administrative law judge’s weighing of this evidence. The administrative law judge accurately reviewed the conflicting x-ray evidence of record, consisting of one positive and three negative interpretations of three films, and determined that the sole positive interpretation was by a reader with no special radiological qualifications, while the negative interpretations were rendered by Board-certified radiologists and/or B readers. Decision and Order at 6, 10. Based on the preponderance of negative interpretations by the best qualified readers, the administrative law judge acted within his discretion in finding that the weight of the x-ray evidence was negative for pneumoconiosis. Decision and Order at 10; *see 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); *White v. New White Coal Co.*, 23 BLR 1-1 (2004). The administrative law judge’s findings pursuant to Section 718.202(a)(1) are supported by substantial evidence and thus are affirmed.

Claimant does not challenge the administrative law judge’s finding that the remaining evidence of record is insufficient to establish the existence of pneumoconiosis, but argues that the Director violated his statutory duty to provide claimant with a complete and credible pulmonary evaluation sufficient to substantiate his claim because the administrative law judge discounted Dr. Simpao’s diagnosis of pneumoconiosis at Section 718.202(a)(4). Claimant’s Brief at 4. Claimant’s arguments are without merit. On its face, Dr. Simpao’s opinion is complete, as the physician conducted a physical examination, recorded claimant’s symptoms as well as his employment, medical and social histories, obtained x-rays, an electrocardiogram, pulmonary function studies and blood gas studies, and addressed all of the elements of entitlement. Decision and Order at 8; Director’s Exhibits 11, 34. In evaluating the conflicting opinions of the three pulmonary specialists of record, the administrative law judge gave greater weight to the

opinions of Drs. Rosenberg and Fino because they persuasively and thoroughly explained why they did not diagnose pneumoconiosis, see Employer's Exhibits 1, 3, 5, 7, and gave less weight to Dr. Simpao's diagnosis of pneumoconiosis because it was based in part upon a positive x-ray that was refuted by the negative interpretation of a better-qualified reader and outweighed by the x-ray evidence as a whole, and because Dr. Simpao provided no explanation for his conclusion that "multiple years of coal dust exposure is medically significant in [the miner's] pulmonary impairment." Decision and Order at 8, 11; Director's Exhibit 11; see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). In these circumstances, where the physician's pulmonary evaluation was complete, documented, and inherently credible, but his diagnosis of pneumoconiosis was found to be outweighed by the conflicting x-ray and medical opinion evidence of record, the Director's statutory obligation is discharged. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.406(a); see generally *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

Because claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the administrative law judge's denial of benefits. See *Anderson*, 12 BLR 1-111. Consequently, we need not reach claimant's arguments on the issue of total respiratory disability.

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

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

JUDITH S. BOGGS  
Administrative Appeals Judge