

BRB No. 06-0200 BLA

BOBBY JOE SPARKS)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 07/28/2006
)	
SHAMROCK COAL COMPANY, INCORPORATED)	
)	
and)	
)	
JAMES RIVER COAL COMPANY)	
)	
Employer-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.

James M. Kennedy (Baird & Baird, PSC), Pikeville, Kentucky, for employer.

Jeffrey S. Goldberg (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: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denial of Benefits (04-BLA-6110) of Administrative Law Judge Thomas F. Phalen, Jr., rendered 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). Claimant filed his application for benefits on January 16, 2003. Director's Exhibit 2. Based on the date of filing the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718, and credited claimant with seventeen and one-half years of coal mine employment.¹ Decision and Order at 3, 8. The administrative law judge found that claimant failed to establish both the existence of pneumoconiosis and total disability under 20 C.F.R. §§718.202(a), 718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant alleges that the administrative law judge erred in failing to find the existence of pneumoconiosis or total disability established pursuant to 20 C.F.R. §§718.202(a)(1), (a)(4), 718.204(b)(2)(iv). Additionally, claimant argues that the Department of Labor failed to provide him with a complete and credible pulmonary evaluation to substantiate his claim. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds that a remand for a complete pulmonary evaluation is not warranted in this case.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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish 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, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

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 4; Director's Exhibits 3, 35.

² The administrative law judge's length of coal mine employment determination and his findings pursuant to 20 C.F.R. §§718.202(a)(2),(a)(3), and 718.204(b)(2)(i-iii), are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, BLR 6 BLR 1-710 (1983).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered seven readings of four x-rays in light of the readers' radiological qualifications. Dr. Baker, who is a B-reader, read claimant's August 17, 2002 x-ray as positive for pneumoconiosis. Director's Exhibit 13. The administrative law judge noted, however, that Dr. Kendall, "who is both a B-reader and a board-certified radiologist," read the August 17, 2002 x-ray as negative for pneumoconiosis. Decision and Order at 9; Employer's Exhibit 5. Based on Dr. Kendall's "greater" qualifications, the administrative law judge found the August 17, 2002 x-ray to be negative for pneumoconiosis. Decision and Order at 9. Additionally, the administrative law judge considered that Dr. Simpao, who lacks radiological qualifications, read the February 27, 2003 x-ray as positive for pneumoconiosis, and that Drs. Alexander and Barrett, both of whom are Board-certified radiologists and B-readers, read the x-ray as positive and negative, respectively. Director's Exhibits 11, 28; Claimant's Exhibit 1. Based on these readings, the administrative law judge found the February 27, 2003 x-ray "to be in equipoise and . . . inconclusive" for pneumoconiosis. Decision and Order at 9. Because the two remaining x-rays, taken on April 30, 2003 and November 2, 2004, received only negative readings, the administrative law judge found that claimant did not establish the existence of pneumoconiosis by the x-ray evidence.

The administrative law judge based his finding on a proper qualitative analysis of the x-ray evidence. See *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004). Consequently, claimant's argument that the administrative law judge improperly relied on the readers' credentials and the numerical superiority of negative readings lacks merit. We therefore affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered four medical opinions. Drs. Simpao and Baker diagnosed claimant with pneumoconiosis, while Drs. Rosenberg and Fino concluded that he does not have pneumoconiosis. Director's Exhibits 11, 13; Employer's Exhibits 1-4. The administrative law judge explained that although the opinions of Drs. Simpao and Baker were "well documented," he gave them less weight because their diagnoses of pneumoconiosis were based on each doctor's discredited x-ray reading and a reference to claimant's history of coal mine dust exposure. Decision and Order at 10-11; Director's Exhibits 11, 13. By contrast, the administrative law judge found that Drs. Rosenberg and Fino provided well reasoned opinions that claimant does not have pneumoconiosis. The administrative law judge therefore found that their opinions outweighed those of Drs. Simpao and Baker. Decision and Order at 11.

Claimant contends that the administrative law judge erred in discounting Dr. Baker's opinion as based on a positive x-ray reading that was "contrary to the

[administrative law judge's] findings." Claimant's Brief at 4. Contrary to claimant's contention, the administrative law judge reasonably discounted Dr. Baker's diagnosis of pneumoconiosis because it was based on Dr. Baker's positive reading of the August 17, 2002 x-ray, which the administrative law judge found "was reread as negative" by a physician with superior qualifications. Decision and Order at 11; *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003). Claimant additionally contends that Dr. Baker's opinion was documented and reasoned and thus should not have been discredited. Claimant's Brief at 4-5. Claimant essentially requests a reweighing of the evidence, which we cannot do. *Anderson*, 12 BLR at 1-113. Substantial evidence supports the administrative law judge's permissible determination that Dr. Baker's opinion was not as well-reasoned as the contrary opinions of Drs. Rosenberg and Fino. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993). Consequently, we affirm the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Claimant contends that because the administrative law judge did not credit Dr. Simpao's February 27, 2003 opinion provided by the Department of Labor, "the Director has failed to provide the claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 5. The Director responds that because the administrative law judge found Dr. Simpao's diagnosis of pneumoconiosis to be credible but outweighed, Dr. Simpao's opinion as to the existence of pneumoconiosis met the Director's obligation to claimant.³

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406. The issue of whether the Director has met this duty may arise where "the administrative law judge finds a medical opinion incomplete," or where "the administrative law judge finds that the opinion, although complete, lacks credibility." *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); *accord Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 1166, 7 BLR 2-25, 2-31 (8th Cir. 1984).

³ The Director states that "Dr. Simpao's report is incomplete because it lacks an opinion regarding whether [claimant] is totally disabled," but he agrees with the administrative law judge that a remand for an updated opinion on total disability is unnecessary because claimant "would still not be entitled to benefits since he failed to establish pneumoconiosis." Director's Brief at 2.

As indicated, with respect to the issue of pneumoconiosis, the administrative law judge found that Dr. Simpao's diagnosis was outweighed by the opinions of Drs. Rosenberg and Fino, which were found better reasoned. Decision and Order at 10-11. Because Dr. Simpao's opinion was merely found outweighed on the issue of pneumoconiosis, there is no merit to claimant's argument that the administrative law judge's treatment of Dr. Simpao's opinion establishes that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation with respect to the element which defeated entitlement in this case. *Cf. Hodges*, 18 BLR at 1-93.

Because claimant failed to establish the existence of pneumoconiosis, a necessary element of entitlement in a miner's claim under Part 718, we affirm the administrative law judge's denial of benefits. *Anderson*, 12 BLR at 1-112; *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*). 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.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge