

BRB No. 07-0924 BLA

L. M.)
)
 Claimant-Petitioner)
)
 v.)
)
 LEATHERWOOD PROCESSING)
 COMPANY)
) DATE ISSUED: 07/24/2008
 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 Denying Benefits of William S. Colwell,
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.

Michelle S. Gerdano (Gregory F. Jacob, Solicitor of Labor; 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
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2006-BLA-05061) of Administrative Law Judge William S. Colwell 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). The administrative law judge credited claimant with thirty-nine years of coal mine employment,¹ and adjudicated this claim, filed on October 21, 2004, pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence failed to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or total 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 findings that the x-ray evidence did not establish the existence of pneumoconiosis at Section 718.202(a)(1), and the medical opinion evidence failed to establish total disability at Section 718.204(b)(2)(iv). Further, claimant contends that the Director, Office of Workers' Compensation Programs (the Director), failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director has filed a limited response, urging the Board to reject claimant's contention that he was not provided with a complete pulmonary evaluation.

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'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 suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Initially, we reject as meritless claimant's challenge to the administrative law judge's determination that the preponderance of the evidence failed to establish the

¹ This cases arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, because the miner's coal mine employment occurred in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibits 2 at 2, 19 at 10, 16.

existence of pneumoconiosis pursuant to Section 718.202(a)(1), as our review indicates that the administrative law judge accurately reviewed and permissibly weighed the conflicting evidence. Specifically, in evaluating the x-ray of March 14, 2005, the administrative law judge chose to give greater weight to the negative interpretation of Dr. Wiot, who is dually qualified as a B reader² and Board-certified radiologist, and as a professor emeritus with extensive experience in radiology, because his relevant qualifications are superior to those of Dr. Rasmussen, a B reader. Decision and Order at 5, 12; Employer's Exhibits 6, 8. The administrative law judge therefore discounted Dr. Rasmussen's positive interpretation and concluded that the March 14, 2005 x-ray is negative for the existence of pneumoconiosis. Moreover, the remaining x-rays of June 7, 2005 and August 15, 2006 were interpreted as negative without contradiction, respectively, by Drs. Broudy and Rosenberg, both dually qualified as B readers and Board-certified radiologists. Decision and Order at 5, 12. Accordingly, the administrative law judge determined that the weight of the x-ray evidence as a whole is negative and does not establish the presence of pneumoconiosis under Section 718.202(a)(1). *Id.*

An administrative law judge must consider the quantity of the x-ray evidence in light of the qualifications of the interpreting physicians. *Staton v Norfolk & Western Railroad Co.*, 65 F.3d 55, 58, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). Readings by physicians who are B readers and Board-certified radiologists are validly accorded greater weight than interpreting physicians without such qualifications. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211, 1-213 (1985). Moreover, Section 718.202(a)(1) requires that when two or more x-ray interpretations are in conflict, consideration shall be given to the relative radiological qualifications of the interpreting physicians. 20 C.F.R. §718.202(a)(1). Accordingly, because the administrative law judge rationally considered all of the x-ray evidence of record, claimant's assertions that the evidence may have been selectively analyzed, or was improperly weighed based on numerical superiority, are without merit. Moreover, the administrative law judge's consideration of both the qualitative nature and the quantitative nature of the various interpretations was

² A "B reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §717.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 6-7.

appropriate, and he validly exercised his discretion in finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis. See *White v. New White Coal Co.*, 23 BLR 1-1 (2004); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-4 (1990).

Substantial evidence supports the administrative law judge's determination that the x-ray evidence failed to establish the existence of pneumoconiosis under Section 718.202(a); it is thus affirmed. Additionally, as claimant did not identify any error of law or fact in the administrative law judge's consideration of the evidence pursuant to Section 718.202(a)(2)-(4), we affirm the administrative law judge's findings thereunder, as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1- 710 (1983).

Next, we reject claimant's assertion that the Director failed to provide him with a pulmonary evaluation sufficient to substantiate his claim for benefits, as required under the Act. In support of his assertion, claimant argues that "the administrative law judge concluded that Dr. Rasmussen's report was based solely upon the claimant's x-ray and that, as a consequence, his report was unreasoned." Claimant's Brief at 4. The Director responds that he met his statutory obligation to provide claimant with a complete and credible pulmonary evaluation, and that the administrative law judge chose instead to credit the contrary opinions of Drs. Broudy and Rosenberg, whose superior credentials lent greater weight to their conclusion that claimant does not have pneumoconiosis.

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; see *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994). Claimant selected Dr. Rasmussen to conduct his Department of Labor (DOL) sponsored medical evaluation. Director's Exhibit 12. Dr. Rasmussen examined claimant on March 14, 2005, and performed the full range of testing required by the regulations, providing information and medical data addressing each element of entitlement on the Department of Labor examination form. Director's Exhibit 13; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). Contrary to claimant's assertion, the administrative law judge did not find Dr. Rasmussen's medical opinion on the issue of pneumoconiosis to be "unreasoned;" rather, he found the reports of Drs. Broudy and Rosenberg to be more comprehensive, and chose to assign less weight to Dr. Rasmussen's diagnosis of pneumoconiosis "as less reasoned and because his credentials are not equal to those of Drs Broudy and Rosenberg in the area of pulmonary medicine." Decision and Order at 13.

The Director's statutory obligation is to provide claimant with a complete pulmonary evaluation; there is no duty to provide a dispositive medical opinion. In this connection, we note that claimant identifies no objection to the content of Dr. Rasmussen's report, nor does he specifically challenge the administrative law judge's evaluation of the respective credentials of the physicians. Further, our review indicates

that the administrative law judge permissibly accorded greater weight to the medical opinions of the interpreting physicians with greater expertise, *Dillon v. Peabody Coal Co.*, 11 BLR 1-113, 1-114 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985), who better explained the bases for their diagnostic determinations. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-647 (6th Cir. 2003). An administrative law judge is not bound to accept the opinion of any particular medical expert, but validly exercises his discretion in determining whether a medical opinion is supported by its objective data so as to be deemed “reasoned,” *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *see also Knuckles v. Director, OWCP*, 869 F.2d 996, 12 BLR 2-217 (6th Cir. 1989), and may accord varying degrees of credence as warranted by the persuasiveness of the medical evidence. We therefore agree with the Director that the Department of Labor has satisfied its obligation to provide claimant with a complete pulmonary evaluation, as required under the Act. *See generally Cline v. Director, OWCP*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

Because claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202, an essential element of entitlement under the Act, entitlement is precluded. *See Anderson*, 12 BLR at 1-112. Consequently, we affirm the administrative law judge’s denial of benefits, and need not address claimant’s challenge to the administrative law judge’s finding that the evidence failed to establish 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

BETTY JEAN HALL
Administrative Appeals Judge