BRB No. 01-0922 BLA

JAMES CANTOLINA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KING COAL SALES, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
ROCKWOOD CASUALTY INSURANCE COMPANY	)	
	)	
Employer/Carrier-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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Ronald E. Archer, Houtzdale, Pennsylvania, for claimant.

Sean B. Epstein (Pietragallo, Bosick & Gordon), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (00-BLA-1095) of Administrative Law Judge Daniel L. Leland 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).[1] In this request for modification of the denial of a duplicate

[1] The Department of Labor has amended the regulations implementing the Federal

claim, the administrative law judge accepted the parties' stipulations to twenty-two years of coal mine employment and a totally disabling respiratory impairment and found that a material change in conditions was established. Considering the claim on the merits, however, the administrative law judge found that the evidence failed to establish the existence of pneumoconiosis.[2] Benefits were, accordingly, denied.

On appeal, claimant contends that the evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (4).[3] Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith,*

Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2] Claimant filed the instant claim on January 12, 1999. Director's Exhibit 1. Claimant's prior claim was filed on June 2, 1997 and denied on November 19, 1997 because the evidence failed to establish any of the elements of entitlement. Director's Exhibit 32.

[3] The administrative law judge's findings that the existence of pneumoconiosis was not established at 20 C.F.R. §718.202(a)(2) and (3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204 (2000). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant argues that the administrative law judge erred in finding that the x-ray evidence failed to establish the existence of pneumoconiosis. Specifically, claimant asserts that the administrative law judge should have accorded greater weight to the more recent x-rays which were read as positive instead of according greater weight to earlier x-rays which were read negative by the physicians with superior qualifications.

Contrary to claimant's argument, however, the administrative law judge, in considering x-rays taken over a three year span in this case, properly accorded greater weight to the negative readings of the physicians who were dually qualified as Board-certified, B-readers than to the positive readings of those physicians who were only qualified as B-readers. 20 C.F.R. §718.202(a)(1); *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); *Fife v. Director, OWCP*, 888 F.2d 365, 13 BLR 2-109 (6th Cir. 1989); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The administrative law judge, therefore, properly found that the x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1).

Claimant next asserts that the administrative law judge erred in finding that the medical opinion of Dr. Zlupko failed to establish the existence of pneumoconiosis. Specifically, claimant asserts that the administrative law judge improperly accorded greater weight to the opinion of Dr. Fino, over the opinion of Dr. Zlupko solely because of Dr. Fino's superior credentials, and erred in according less weight to the opinions of Drs. Begley and Fino as unreasoned when they were as well-reasoned as the opinion of Dr. Zlupko. In weighing the medical opinions, the administrative law judge accorded less weight to Dr. Zlupko's opinion because while Dr. Zlupko found that claimant's x-ray was consistent with pneumoconiosis, he did not make a definite diagnosis of pneumoconiosis. Director's Exhibit 6; Decision and Order at 6. This was rational. *Worhach*, *supra*; *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Further, the administrative law judge went on to state that even if Dr. Zlupko had diagnosed pneumoconiosis, his opinion would be outweighed by the opinions of Drs. Fino and Begley, who were both Board-certified in pulmonary diseases. Decision and Order at 6. This was rational. *Dillon v. Peabody Coal*

Co., 11 BLR 1-113 (1988); *Clark, supra*; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *see also Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983); Director's Exhibit 7; Employer's Exhibit 1. We, therefore, affirm the administrative law judge's finding that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and (4). *See Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997).

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge