

BRB No. 06-0745 BLA

EDGAR RITCHIE)
)
 Claimant-Petitioner)
)
 v.)
) DATE ISSUED: 03/27/2007
 BIG ELK CREEK COAL COMPANY)
)
 and)
)
 KENTUCKY EMPLOYERS MUTUAL)
 INSURANCE)
)
 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 – 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.

Paul Jones (Jones, Walters, Turner & Shelton), Pikeville, Kentucky, for employer.

Helen H. Cox (Jonathan L. Snare, Acting 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 – Denial of Benefits (04-BLA-5887) 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 claim for benefits on October 11, 2002. Director’s Exhibit 2. The administrative law judge credited claimant with twenty-three years of coal mine employment.¹ Decision and Order at 3. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence did not establish the existence of pneumoconiosis or a totally disabling pulmonary or respiratory impairment pursuant to 20 C.F.R. §§718.202(a), 718.204(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1),(4),² and total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant also contends that the Director, Office of Workers’ Compensation Programs (the Director), 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 responds, asserting that the Board should reject claimant’s argument that the case must be remanded for 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 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).

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*

¹ The record indicates that claimant’s coal mine employment occurred in Kentucky. Director’s Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

² Because claimant does not challenge the administrative law judge’s findings that the existence of pneumoconiosis was not established at 20 C.F.R. §718.202(a)(2), (3), we affirm them. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

v. Valley Camp of Utah, Inc., 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered six readings of four x-rays. The administrative law judge noted that Dr. Dahhan, a B reader, read the April 6, 2004 x-ray as negative for pneumoconiosis, and that Dr. Broudy, a B reader, read the July 9, 2003 x-ray as negative for pneumoconiosis. Director's Exhibit 27; Employer's Exhibit 3. Since there were no contrary readings of these two x-rays, the administrative law judge found both x-rays negative for pneumoconiosis. The administrative law judge additionally considered that Dr. Baker, a B reader, read the March 8, 2003 x-ray as positive for pneumoconiosis, but also considered that Dr. Wheeler, a Board-certified radiologist and B reader, read the same x-ray as negative for pneumoconiosis. Director's Exhibits 18, 26. Based on Dr. Wheeler's qualifications, the administrative law judge found the March 8, 2003 x-ray negative for pneumoconiosis. Finally, the administrative law judge considered that Dr. Simpao, a physician with no special radiological credentials, read the January 28, 2003 x-ray as positive for pneumoconiosis, and that Dr. Wheeler read the same x-ray as negative for pneumoconiosis. Director's Exhibits 10, 21. Based on Dr. Wheeler's qualifications, the administrative law judge found the January 28, 2003 x-ray negative for pneumoconiosis. In "review of the quantity of negative films and taking notice of the credentials of the reviewing physicians," the administrative law judge found that the x-ray evidence failed to establish the existence of pneumoconiosis. Decision and Order at 9.

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 arguments that the administrative law judge improperly relied on the readers' credentials, merely counted the negative readings, and "may have 'selectively analyzed'" the readings, lack merit. Claimant's Brief at 3. 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. Baker and Simpao diagnosed claimant with pneumoconiosis, while Drs. Broudy and Dahhan concluded that he does not have pneumoconiosis. Director's Exhibits 10, 18, 20, 27; Employer's Exhibits 2-4. The administrative law judge found Dr. Baker's opinion "poorly documented, poorly reasoned and entitled to little weight," because Dr. Baker provided "no rationale for his diagnosis of pneumoconiosis other than a positive chest x-ray reading." Decision and Order at 10. Similarly, the administrative law judge accorded Dr. Simpao's diagnosis of coal workers' pneumoconiosis only "some weight," because it "appear[ed] to" be based on claimant's coal dust exposure history, and a positive x-ray that "was re-read as negative by a more

credentialed reader.” *Id.* The administrative law judge further explained that, to the extent Dr. Simpao may have relied on his physical examination findings, he failed to explain how those results supported his diagnosis of coal workers’ pneumoconiosis. *Id.* By contrast, the administrative law judge found that Drs. Dahhan and Broudy, based on the objective evidence, provided better reasoned and documented opinions that claimant does not have pneumoconiosis. *Id.* He therefore found that the opinions of Drs. Dahhan and Broudy outweighed those of Drs. Baker and Simpao.

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 ALJ’s findings.” Claimant’s Brief at 4. Contrary to claimant’s contention, the administrative law judge reasonably discounted Dr. Baker’s diagnosis of “Coal Workers’ Pneumoconiosis 1/0,” since it was based on Dr. Baker’s positive reading of the March 8, 2003 x-ray, which the administrative law judge found outweighed by the negative reading of the same x-ray by a physician with superior qualifications, and because the diagnosis was not otherwise explained. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-10 (6th Cir. 2000). Claimant additionally contends that the opinion of Dr. Baker was documented and reasoned and should not have been discredited. Claimant’s Brief at 5. Claimant essentially requests a reweighing of the evidence, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. Substantial evidence supports the administrative law judge’s permissible determination that the opinion of Dr. Baker was not as well-reasoned as the contrary opinions of Drs. Broudy and Dahhan. 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 also contends that he is entitled to a remand of the case for the Director to provide him with a complete and credible pulmonary evaluation, because the administrative law judge discounted Dr. Simpao’s diagnosis of pneumoconiosis as not fully explained, and found that Dr. Simpao did not discuss whether the mild impairment he diagnosed was totally disabling. Claimant’s Brief at 5. The Director responds that “the fact that Judge Phalen found Dr. Simpao’s opinion on the presence of pneumoconiosis ‘somewhat reasoned and documented’ but outweighed by the better supported opinions offered by two pulmonary specialists means the ALJ found Dr. Simpao provided a credible diagnosis of pneumoconiosis that was ultimately outweighed by more persuasive evidence.” Director’s Brief at 2.

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).

The record reflects that Dr. Simpao conducted an examination and the full range of testing required by the regulations, and addressed each element of entitlement on the Department of Labor examination form. Director’s Exhibit 10; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). On the issue of the existence of pneumoconiosis, the administrative law judge found that Dr. Simpao’s diagnosis of “CWP 1/0” was based primarily on coal dust exposure history and a positive x-ray reading that the administrative law judge found outweighed by the negative reading of that x-ray by a physician with superior radiological credentials. Decision and Order at 10. The administrative law judge further found that even if Dr. Simpao considered his physical findings on examination in reaching his conclusion, he failed to explain how the results support his finding of coal workers’ pneumoconiosis. *Id.* Additionally, the administrative law judge chose to give greater weight to the better reasoned and better documented opinions of Drs. Dahhan and Broudy. *Id.*; see *Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999)(explaining that “ALJ’s may evaluate the relative merits of conflicting physicians’ opinions and choose to credit one . . . over the other”). Thus, the administrative law judge found Dr. Simpao’s opinion outweighed on the issue of pneumoconiosis. Therefore, a remand for a full pulmonary evaluation on the issue of pneumoconiosis is not warranted.

Contrary to claimant’s argument, because we affirm the administrative law judge’s finding that the evidence does not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), we need not address claimant’s challenge to the sufficiency of

Dr. Simpao's opinion regarding total disability. As the evidence fails to establish the existence of pneumoconiosis, an essential element of entitlement pursuant 20 C.F.R. Part 718, an award of benefits is precluded in this case. *See Trent*, 11 BLR at 1-27. Thus, a remand for Dr. Simpao to clarify his opinion regarding total disability would be futile.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge