

BRB No. 06-0110 BLA

GEORGE ROBERTS, JR.)
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 05/25/2006
)
 SHAMROCK COAL COMPANY,)
 INCORPORATED)
)
 and)
)
 JAMES RIVER COAL 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 William Colwell, Administrative Law Judge, United States Department of Labor.

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

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

Michelle S. Gerdano (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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-6566) of Administrative Law Judge William 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). Claimant filed his application for benefits on September 4, 2001. Director's Exhibit 2. The administrative law judge credited claimant with fourteen years of coal mine employment.¹ The administrative law judge found that claimant failed to establish either the existence of pneumoconiosis or that he is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §§718.202(a), 718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the x-ray evidence when he found that claimant did not establish the existence of pneumoconiosis. Claimant argues further that the administrative law judge erred in his consideration of the medical opinion evidence when he found that claimant did not establish that he is totally disabled. 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 administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds that he met his obligation to provide claimant with a complete and credible 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'Keefe 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, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

¹ The record indicates that claimant's last coal mine employment occurred in Kentucky. Director's Exhibits 5, 15. 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*).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered six readings of four x-rays in light of the readers' radiological qualifications. Dr. Simpao, who lacks radiological qualifications, read the October 16, 2001 x-ray as positive for pneumoconiosis. Director's Exhibit 12. The administrative law judge noted, however, that Dr. Poulos, "a highly qualified board certified radiologist and B-reader," read the October 16, 2001 x-ray as negative for pneumoconiosis. Decision and Order at 4; Director's Exhibit 39. Based on Dr. Poulos's "significantly higher qualifications," the administrative law judge found the October 16, 2001 x-ray to be negative for pneumoconiosis. *Id.* Similarly, the administrative law judge considered that Dr. Baker, who lacks radiological qualifications, read the December 5, 2001 x-ray as positive for pneumoconiosis, and that Dr. Wiot, who is a Board-certified radiologist and B-reader, read the same x-ray as negative. Director's Exhibit 19, 32. Based on Dr. Wiot's qualifications, the administrative law judge found the December 5, 2001 x-ray negative for pneumoconiosis. Because the two remaining x-rays, taken on March 5, 2002 and February 17, 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 arguments that the administrative law judge improperly relied on the readers' credentials, merely counted the negative readings, and that he "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. Simpao and Baker diagnosed claimant with pneumoconiosis, while Drs. Rosenberg and Fino concluded that he does not have pneumoconiosis. Director's Exhibits 12, 19, 26, 28; Employer's Exhibits 1, 3, 8. The administrative law judge explained that he gave less weight to Dr. Simpao's diagnosis of "CWP 1/0" and to Dr. Baker's diagnosis of "Coal Workers' Pneumoconiosis, category 1/0," because these diagnoses were "based primarily" on each doctor's discredited x-ray reading and a reference to claimant's history of coal mine dust exposure. Decision and Order at 7; Director's Exhibits 12, 19. The administrative law judge additionally found that Dr. Baker provided only "brief written conclusions" with little explanation of his reasoning. Decision and Order at 7. By contrast, the administrative law judge found that Drs. Rosenberg and Fino provided better reasoned and explained opinions that claimant does not have pneumoconiosis. The administrative law judge therefore found that their opinions outweighed those of Drs. Simpao and Baker.

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 "Coal Workers' Pneumoconiosis, category 1/0," since it was based on Dr. Baker's positive reading of the December 5, 2001 x-ray, which the administrative law judge found outweighed by the negative reading of a physician with superior qualifications. *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 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 or explained 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 October 16, 2001 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 he is required to provide claimant "with the opportunity to undergo a complete pulmonary evaluation," and states that he met his statutory obligation in this case. Director's Brief at 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).

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 12; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). The administrative law judge did not find nor does claimant allege that Dr. Simpao's report was incomplete. On the issue of the existence of

pneumoconiosis, the administrative law judge found that Dr. Simpao's diagnosis of "CWP 1/0" was based largely on a positive x-ray reading that the administrative law judge found outweighed by the negative reading of a physician with superior radiological credentials. Decision and Order at 4, 8. This was the sole cardiopulmonary diagnosis listed in Dr. Simpao's report, and the administrative law judge merely found the specific medical data for Dr. Simpao's diagnosis to be outweighed. Director's Exhibit 12 at 4. Additionally, the administrative law judge chose to give greater weight to the "better reasoned and better documented" opinions of Drs. Rosenberg and Fino. Decision and Order at 8; *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"). Because Dr. Simpao's report was complete and the administrative law judge merely found it outweighed, there is no merit to claimant's argument that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. *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 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