

BRB No. 06-0185 BLA

CARTER D. SAMS)
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 Claimant-Petitioner)
)
 v.) DATE ISSUED: 05/30/2006
)
 CALVARY COAL COMPANY,)
 INCORPORATED)
)
 and)
)
 LIBERTY MUTUAL INSURANCE)
 COMPANY)
)
 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 Denying Benefits of William Colwell,
Administrative Law Judge, United States Department of Labor.

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

Francesca L. Maggard (Lewis and Lewis Law Offices), Hazard, 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-6559) of Administrative Law Judge William Colwell 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 20, 2001. Director's Exhibit 2. The administrative law judge noted that employer did not challenge the district director's finding that claimant had seventeen years of coal mine employment. 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 he met his obligation to provide claimant with a complete and credible pulmonary evaluation.¹

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'Keefe 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).

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. Decision

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

and Order at 4-5. The administrative law judge correctly found that the July 8, 2002 and September 25, 2003 x-rays were read as negative for pneumoconiosis by B-readers Drs. Dahhan and Broudy. Decision and Order at 5; Director's Exhibit 16; Employer's Exhibit 1. Further, because the December 5, 2001 x-ray was read as positive by Dr. Hussain, who has no radiological qualifications listed in the record, but as unreadable by Dr. Sargent, and as negative by Dr. Wheeler, both of whom are Board-certified radiologists and B-readers, the administrative law judge found this x-ray negative for pneumoconiosis. Decision and Order at 4; Director's Exhibit 13-15. Similarly, because the September 18, 2002 x-ray was read as positive for pneumoconiosis by Dr. Baker, who has no radiological qualifications listed in the record, and as negative by Dr. Wheeler, who is a Board-certified radiologist and B-reader, the administrative law judge found this x-ray negative. Accordingly, 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' radiological 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 Section 718.202(a)(4), the administrative law judge considered four medical opinions. Drs. Hussain and Baker diagnosed claimant with pneumoconiosis, while Drs. Dahhan and Broudy concluded that he does not have pneumoconiosis. Director's Exhibits 10, 16, 26; Employer's Exhibit 1. The administrative law judge explained that he gave less weight to Dr. Hussain's diagnosis because it was based "primarily" on Dr. Hussain's discredited x-ray reading and a reference to claimant's history of coal mine dust exposure.² Decision and Order at 7; Director's Exhibit 10. The administrative law judge additionally found that Dr. Hussain's opinion was not well-explained. *Id.* Further, the administrative law judge gave less weight to Dr. Baker's diagnosis of Coal Workers' Pneumoconiosis, category 1/0" because it was based "primarily" on Dr. Baker's "discounted" positive x-ray reading and claimant's coal dust exposure history. Decision and Order at 7; Director's Exhibit 26. To the extent that Dr. Baker diagnosed impairments that he related partly to coal dust exposure, the administrative law judge found that Dr. Baker "provided tersely written conclusions" that

² The administrative law judge noted that Dr. Hussain also diagnosed chronic obstructive pulmonary disease, but attributed that condition to "tobacco abuse." Decision and Order at 6; Director's Exhibit 10 at 4.

did not constitute a reasoned opinion. Decision and Order at 7. By contrast, the administrative law judge found that Drs. Dahhan and Broudy provided better reasoned and documented opinions that claimant does not have pneumoconiosis. The administrative law judge therefore found that their “more persuasive” opinions outweighed those of Drs. Hussain and Baker. Decision and Order at 8.

Claimant contends that the administrative law judge erred in discounting Dr. Baker’s opinion as “merely an x-ray interpretation.” 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 September 18, 2002 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. Dahhan and Broudy. *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 a diagnosis of pneumoconiosis contained in Dr. Hussain’s December 5, 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 1-2.

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. Hussain 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). The administrative law judge did not find nor does claimant allege that Dr. Hussain's report was incomplete. On the issue of the existence of pneumoconiosis, the administrative law judge found that Dr. Hussain's diagnosis of pneumoconiosis 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, 7. This was the sole diagnosis of pneumoconiosis listed in Dr. Hussain's report, and the administrative law judge merely found the specific medical data for Dr. Hussain's diagnosis to be outweighed. Director's Exhibit 10 at 4. Additionally, the administrative law judge chose to give greater weight to the "better documented and reasoned" opinions of Drs. Dahhan and Broudy. 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. Hussain'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. 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