

BRB No. 07-0700 BLA

P.K.)
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 Claimant-Petitioner)
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 v.)
)
 ADDINGTON, INCORPORATED) DATE ISSUED: 05/14/2008
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 and)
)
 OHIO BUREAU OF WORKERS')
 COMPENSATION)
)
 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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2005-BLA-05941) of Administrative Law Judge Joseph E. Kane (the administrative law judge) 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 sixteen years of coal mine employment, based on a stipulation by the parties, and adjudicated this claim, filed on February 6, 2002, pursuant to the regulations contained in 20 C.F.R. Part 718. In addition, the administrative law judge found that Addington, Inc. (employer) is the properly designated responsible operator and that it is capable of assuming liability for this claim. The administrative law judge then found that the medical evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence when he found that claimant did not establish the existence of pneumoconiosis. Claimant also contends that the administrative law judge erred in finding that claimant did not establish that he is totally disabled. Employer has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs, has stated that he will not respond on the merits of claimant's appeal.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 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).

In order to establish entitlement to benefits in a living miner's claim 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.² *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR

¹ We affirm, as unchallenged on appeal, the administrative law judge's decision to credit claimant with sixteen years of coal mine employment and his finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² As claimant's coal mine employment was in Ohio, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. Director's Exhibit 14 at 5; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 718.202(a)(1), the administrative law judge found that the x-ray evidence of record consists of two interpretations of one x-ray, dated April 8, 2002.³ Director's Exhibits 12, 13. Dr. Wicker, who has no special radiological qualifications, and Dr. Wiot, a Board-certified radiologist and B reader, both interpreted this x-ray as negative for the disease. *Id.* Weighing these readings, the administrative law judge found that because there are no positive x-ray interpretations in the record, the existence of pneumoconiosis has not been established pursuant to Section 718.202(a)(1). Decision and Order at 7.

Because the administrative law judge properly found that none of the x-ray interpretations was positive for pneumoconiosis, he based his finding on a proper qualitative analysis of the x-ray evidence. Decision and Order at 5, 7; Director's Exhibits 12, 13; *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, 320, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128, 1-131 (1984). 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.⁴ Decision and Order at 7. We therefore affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), as supported by substantial evidence.

In challenging the administrative law judge's weighing of the medical opinion evidence pursuant to Section 718.202(a)(4), claimant generally contends that the administrative law judge erred in finding that the medical opinion evidence fails to establish the existence of pneumoconiosis. Claimant's Brief at 3-4. Claimant states that it is error for the administrative law judge to substitute his own interpretations of the medical evidence for those of the physician. Claimant's Brief at 4. This contention lacks merit.

The administrative law judge properly found that the medical opinion of Dr. Wicker, the sole medical opinion of record, did not diagnose the existence of

³ An additional reading by Dr. Sargent was obtained solely to assess the quality of the x-ray. Director's Exhibit 12.

⁴ Claimant has provided no support for his assertion that the administrative law judge "may have 'selectively analyzed' the x-ray evidence." Claimant's Brief at 3.

pneumoconiosis. Specifically, the administrative law judge correctly found that Dr. Wicker stated that there was no evidence of pneumoconiosis and that he opined that claimant suffered from no respiratory impairment. Decision and Order at 5, 8; Director's Exhibit 12; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-123 (6th Cir. 2000); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). As the administrative law judge correctly found that the record contains no affirmative evidence of pneumoconiosis, claimant's contention that the administrative law judge erred in substituting his interpretation of the medical evidence for that of a physician lacks merit. Consequently, since claimant does not otherwise allege any specific errors in the administrative law judge's weighing of the evidence in this case, we affirm his finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

In light of our affirmance of the administrative law judge's findings that the evidence does not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the medical opinion evidence does not establish total disability pursuant to Section 718.204(b)(2)(iv). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge