

TEDDY HUNT)
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 Claimant-Petitioner)
)
 v.)
)
 ELKHORN CITY MINING)
 COMPANY, INC.)
)
 and)
)
 KENTUCKY EMPLOYERS' MUTUAL)
 INSURANCE)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT OF)
 LABOR)
)
 Party-in -Interest)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Paul E. Jones (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (99-BLA-0829) of Administrative Law Judge Thomas F. Phalen, Jr., 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 administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and insufficient to establish total respiratory disability pursuant to Section 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied the claim.

On appeal, claimant challenges the administrative law judge's finding at Section 718.202(a)(4), contending that the medical opinion evidence establishes the existence of pneumoconiosis thereunder. Claimant asserts that the administrative law judge improperly discounted the opinion of Dr. Sundaram, who opined that claimant has pneumoconiosis. Claimant also challenges the administrative law judge's findings with regard to Section 718.204(c), asserting that the administrative law judge erred in his weighing of Dr. Sundaram's opinion. Employer, in response, asserts that the administrative law judge's finding that the evidence fails to establish entitlement is supported by substantial evidence, and accordingly, it urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a response brief in the instant appeal.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

¹Claimant is Teddy Hunt, the miner, who filed a claim with the Department of Labor (DOL) on September 17, 1998. Director's Exhibit 1.

²Inasmuch as no party challenges the administrative law judge's findings that claimant established 18 years of qualifying coal mine employment, that employer is properly designated as the putative responsible operator, that claimant has three dependents for purposes of augmentation, and that the evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(1), (a)(2), and (a)(3), these findings are affirmed. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Coal Co.*, 6 BLR 1-710 (1983).

Claimant initially challenges the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Claimant asserts that the administrative law judge erred in his consideration of Dr. Sundaram's opinion that claimant suffers from pneumoconiosis, as claimant argues that he improperly discounts this opinion. We disagree. The administrative law judge correctly found that the record contained five relevant medical opinions. He correctly determined that Drs. Baker and Sundaram opined that claimant suffered from pneumoconiosis, while Drs. Broudy, Branscomb and Fino all concluded that claimant does not have pneumoconiosis. Decision and Order at 10; Director's Exhibits 10, 13, 26; Claimant's Exhibit 1; Employer's Exhibits 3, 4, 5, 9, 11, 14. The administrative law judge permissibly accorded more weight to the opinions of Drs. Broudy, Branscomb and Fino on the basis that their opinions were better supported by the objective evidence of record. *See Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987). Moreover, the administrative law judge permissibly discounted the opinion of Dr. Sundaram because he found that his opinion was poorly explained, poorly documented and poorly reasoned. Decision and Order at 10; *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Contrary to claimant's assertion, the administrative law judge did not err by failing to give Dr. Sundaram's opinion due weight as claimant's treating physician. Although the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that the opinions of treating physicians are entitled to greater weight than those of nontreating physicians, *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993), the Sixth Circuit has also held that this principle does not alter the administrative law judge's duty, as trier of fact, to evaluate the credibility of the treating physician's opinion. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). Inasmuch as the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) is supported by substantial evidence and in accordance with applicable law, we affirm it.

As a finding that claimant has not established the existence of pneumoconiosis at Section 718.202(a) precludes entitlement pursuant to the Part 718 regulations, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we further affirm the denial of benefits.

³It is unnecessary for us to address claimant's contentions pursuant to Section 718.204(c) in light of our disposition of the instant case at Section 718.202(a). *See Cochran v. Director, OWCP*, 16 BLR 1-101 (1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

Accordingly, the Decision and Order Denying Benefits of the administrative lawjudge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge