

BRB No. 07-0229 BLA

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 Claimant-Petitioner)
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 v.)
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 BLEDSOE COAL CORPORATATION)
)
 and) DATE ISSUED: 10/24/2007
)
 JAMES RIVER COAL 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 of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy and Lois A. Kitts (Baird and Baird, PSC), 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 (04-BLA-5652) of Administrative Law Judge Janice K. Bullard denying benefits 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 “8.6 years of coal mine employment,” Decision and Order at 6, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence did not establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a)(1)-(4), 718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge’s finding that the x-ray evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Claimant also challenges the administrative law judge’s finding that the medical opinion evidence did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Further, claimant contends that the Director, Office of Workers’ Compensation Programs (the Director), failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. Employer responds, urging affirmance of the administrative law judge’s Decision and Order. The Director filed a limited response, urging the Board to reject claimant’s contention that he failed 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 into the Act by 30 U.S.C. §932(a); *O’Keeffe 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 (1989).

¹ Because the administrative law judge’s findings that the evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2)-(4) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant contends that the administrative law judge erred in finding that the x-ray evidence did not establish the existence of pneumoconiosis at Section 718.202(a)(1). Specifically, claimant asserts that the administrative law judge improperly relied on the qualifications of the physicians submitting negative x-ray readings, and the numerical superiority of the negative x-ray readings. The administrative law judge considered the four interpretations of three x-rays dated August 14, 2002, September 30, 2002, and March 24, 2005.² Dr. Hussain, who is not a B reader or a Board-certified radiologist, read the August 14, 2002 x-ray as positive for pneumoconiosis, while Dr. Poulos, a B reader and a Board-certified radiologist, read this x-ray as negative for pneumoconiosis. Director's Exhibit 8. Based on Dr. Poulos's radiological qualifications, the administrative law judge found that the August 14, 2002 x-ray did not support a finding of pneumoconiosis. Dr. Rosenberg, a B reader, read the September 30, 2002 x-ray as negative for pneumoconiosis. Employer's Exhibit 1. Similarly, Dr. Broudy, a B reader, read the March 24, 2005 x-ray as negative for pneumoconiosis. Employer's Exhibit 4. After considering both the quantitative and qualitative nature of the conflicting x-rays, the administrative law judge found that the preponderance of the x-ray evidence did not establish the existence of pneumoconiosis.

The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge must consider the quantity of the evidence in light of the difference in qualifications of the readers. *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). In this case, the administrative law judge properly accorded greater weight to the x-ray readings by physicians who possessed radiological credentials, than to Dr. Hussain's reading. See *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Therefore, we reject claimant's assertion that the administrative law judge improperly relied on the qualifications of the physicians submitting negative x-ray readings, and the numerical superiority of the negative x-ray readings. *Staton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87. Further, because it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence did not establish the existence of pneumoconiosis at Section 718.202(a)(1).³

² Dr. Barrett, a B reader and Board-certified radiologist, read the August 14, 2002 x-ray for its quality only. Director's Exhibit 8.

³ Claimant generally suggests that the administrative law judge may have selectively analyzed the x-ray evidence. Claimant provides no support for his contention, however, and the Decision and Order reflects that the administrative law judge properly considered all of the x-ray evidence, as discussed *supra*, without engaging in a selective analysis. Decision and Order at 8-9. Thus, we reject claimant's suggestion.

Moreover, because the administrative law judge properly found that the x-ray evidence did not establish the existence of pneumoconiosis, claimant is unable to establish an essential element of entitlement under 20 C.F.R Part 718. See 20 C.F.R. §718.202(a)(1)-(4).⁴ Consequently, we affirm the administrative law judge’s denial of benefits.⁵ *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

Finally, claimant contends that, because “the [administrative law judge] concluded that Dr. Hussain’s report was based merely upon an erroneous x-ray interpretation, and that his opinion was outweighed by the better qualified physicians of record,” the Director failed to provide claimant with a complete, credible pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required by the Act. Claimant’s Brief at 4. The Director responds that he met his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. 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(a). The record reflects that Dr. Hussain conducted an examination and the full range of testing required by the regulations, and addressed the elements of pneumoconiosis and total disability on the Department of Labor examination form. Director’s Exhibit 8; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). On the issue of pneumoconiosis, the administrative law judge reasonably found that Dr. Hussain’s diagnosis of clinical pneumoconiosis was based in part on Dr. Hussain’s 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. See *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). In addition, the administrative law judge reasonably found that Dr. Hussain’s diagnosis of legal pneumoconiosis was outweighed by the better reasoned opinions of Drs. Rosenberg and Broudy that claimant does not have pneumoconiosis.⁶ See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*);

⁴ Claimant does not otherwise challenge the administrative law judge’s findings with respect to whether claimant has established the existence of pneumoconiosis.

⁵ In view of our disposition of the case at 20 C.F.R. §718.202(a), we decline to address claimant’s contentions at 20 C.F.R. §718.204(b)(2)(iv). *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

⁶ The administrative law judge noted that “Dr. Hussain does not offer a comprehensive explanation as to why he diagnoses legal pneumoconiosis, or why he assigned proportionate values of etiology for [c]laimant’s mild pulmonary impairment

Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987). We agree with the Director that the administrative law judge found Dr. Hussain’s opinion outweighed by more persuasive evidence, and that this finding does not indicate a failure by the Director to fulfill his statutory obligation to claimant. *Cf. Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-93 (1994).

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

JUDITH S. BOGGS
Administrative Appeals Judge

between his coal mine dust exposure and history of smoking.” Decision and Order at 12. The administrative law judge further determined that “[Dr. Rosenberg’s and Dr. Broudy’s] medical conclusions are much more comprehensively explained than that of Dr. Hussain, and entitled to more probative weight.” *Id.* at 13.