BRB No. 07-0233 BLA

H.S.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, INCORPORATED	)	DATE ISSUED: 10/30/2007
	)	
Employer-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 Adele Higgins Odegard, 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.

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 Denying Benefits (2005-BLA-05163) of Administrative Law Judge Adele Higgins Odegard 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 found that the

record supported the parties' stipulation to a coal mine employment history of thirty-five years. The administrative law judge found that the claim was timely filed pursuant to 20 C.F.R. §725.308, but found that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge further found that because claimant could not establish the existence of pneumoconiosis or total disability, he could not establish that pneumoconiosis arose out of coal mine employment, 20 C.F.R. §718.203(b), or that total disability was due to pneumoconiosis, 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also argues that the administrative law judge erred in finding the medical evidence of record insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Lastly, claimant contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete, credible pulmonary evaluation as required pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b), 20 C.F.R. §725.406(a), because the administrative law judge discounted the opinion of Dr. Baker. Employer has filed a response brief in support of affirming the administrative law judge's Decision and Order Denying Benefits. The Director has filed a limited response, arguing that claimant was provided with a pulmonary evaluation that complies with the requirements of Section 413(b) of the Act.[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.[2] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe 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,

[1] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] The law of the United States Court of Appeals for the Sixth Circuit is applicable, as the miner was employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibits 3-7.

718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Claimant initially challenges the administrative law judge's weighing of the x-ray evidence of record at Section 718.202(a)(1), arguing that the administrative law judge "relied almost solely on the qualifications of the physicians providing the x-ray interpretations," "placed substantial weight on the numerical superiority of x-ray interpretations," and "may have selectively analyzed" the evidence. Claimant's Brief at 3. Contrary to claimant's arguments, however, we can discern no error in the administrative law judge's weighing of this evidence. The administrative law judge accurately determined that the film dated September 16, 2002 was read as positive by a physician with no special radiological qualifications and reread as negative by a dually-qualified Board-certified radiologist and B reader.[3] Director's Exhibit 34 at 52, Employer's Exhibit 4; Decision and Order at 7. The administrative law judge further determined that the film dated August 30, 2001 was interpreted as positive by a B reader, and reread as negative by a dually-qualified Board-certified radiologist and B reader. Director's Exhibits 11 and 24; Decision and Order at 7. In addition, the administrative law judge found that the film dated December 14, 2001 was interpreted as negative, without contradiction, by a dually-qualified reader, and that the February 17, 2007 film was interpreted as negative, without contradiction by a B reader. Director's Exhibits 25, 34 at 7; Decision and Order at 7. Based on the preponderance of negative interpretations by the best qualified readers,[4] the administrative law judge acted within his discretion in finding that the evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1). Decision and Order at 6; *see Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1

[3] A "B reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co. Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). A Board-certified radiologist is a physician who has been certified by the American Board of Radiology as having particular expertise in the field of radiology.

[4] Section 718.202(a)(1) provides that where two or more x-ray reports are in conflict, consideration shall be given to the radiological qualifications of the physicians interpreting such x-rays. 20 C.F.R. §718.202(a)(1). The United States Court of Appeals for the Sixth Circuit has also 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).

(2004). The administrative law judge's findings are supported by substantial evidence, and thus are affirmed.

Claimant next contends that the opinion of Dr. Sundaram is reasoned, documented and sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4), and that the administrative law judge should not have rejected the opinion for the reasons provided. Contrary to claimant's assertions, however, the administrative law judge acted within her discretion in finding that Dr. Sundaram's opinion was not well-reasoned, as the physician stated that he based his diagnoses of clinical and legal pneumoconiosis on "35 years of exposure to coal dust," but did not explain why he concluded that coal dust exposure contributed to, or aggravated, claimant's respiratory or pulmonary condition, nor did he identify any underlying objective support for his diagnoses. Decision and Order at 11-12; Claimant's Exhibit 1; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). As claimant has not identified any legal or factual error in the administrative law judge's weighing of the remaining medical opinions of record, *i.e.*, the treatment records of Dr. Alam, and the opinions of Drs. Baker, Rosenberg, and Vuskovich, we affirm the administrative law judge's finding that the weight of the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), as supported by substantial evidence. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986).

Claimant next argues that, because the administrative law judge found that Dr. Baker's opinion was not well-reasoned on the issue of the existence of pneumoconiosis, the Director violated his statutory duty to provide claimant with a complete and credible pulmonary evaluation sufficient to substantiate his claim. Claimant's Brief at 5. We disagree. The administrative law judge determined that Dr. Baker conducted a physical examination, recorded claimant's symptoms as well as his employment and medical histories, obtained an x-ray, pulmonary function and blood gas studies, and diagnosed "CWP 1/0" and chronic bronchitis caused in part by coal dust exposure. Director's Exhibit 11; Decision and Order at 8. The administrative law judge did not reject Dr. Baker's opinion as not credible *per se*. Rather, the administrative law judge gave less weight to Dr. Baker's diagnosis of clinical pneumoconiosis because it was based in part upon a positive x-ray that was refuted by the negative interpretation of a better qualified reader and outweighed by the x-ray evidence as a whole. Decision and Order at 12. Furthermore, the administrative law judge determined that Dr. Baker failed to offer a medical rationale for concluding that claimant's chronic bronchitis was related to coal dust exposure. *Id*; *see Clark*, 12 BLR at 1-155. The administrative law judge permissibly found that the contrary opinions of Drs. Rosenberg and Vuskovich were better reasoned and entitled to greater weight. Decision and Order at 13; *Lucostic*, 8 BLR

at 1-47. Thus, as the Director argues, in these circumstances, where the physician performed the necessary testing and provided a medical opinion that addressed all of the essential elements of entitlement, but his diagnosis of pneumoconiosis was found to be outweighed by the conflicting evidence of record, the Director's statutory obligation to provide claimant with a complete pulmonary evaluation is discharged. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.406(a); *see generally Smith v. Martin County Coal Corp.*, 233 Fed. App. 507 (6th Cir. 2007)(unpub.); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

Because claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the administrative law judge's denial of benefits. *See Anderson*, 12 BLR at 1-112.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge