

BRB No. 06-0133 BLA

CRONA HAMLIN)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
KYN COAL COMPANY)	DATE ISSUED: 09/28/2006
)	
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 and Supplemental Decision and Order Denying Request for Reconsideration of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Stephen A. Sanders (Appalachian Citizens Law Center, Incorporated), Prestonburg, Kentucky, for claimant.

H. Brett Stonecipher (Ferreri & Fogle), Lexington, 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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and the Supplemental Decision and Order Denying Request for Reconsideration (04-BLA-5695) of Administrative Law Judge Linda S. Chapman, rendered 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). Based on the claimant's date of filing of August 16, 2002, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order Denying Benefits at 7; Director's Exhibit 2. The administrative law judge accepted employer's concessions that it was properly named the responsible operator and that claimant worked for twenty-three years in the coal mines.¹ Decision and Order Denying Benefits at 3. The administrative law judge further found that the claim was timely filed and that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied benefits. Thereafter, the administrative law judge denied claimant's motion for reconsideration in which he argued that he was not provided with a complete pulmonary evaluation sufficient to substantiate his claim.

On appeal, claimant alleges that the administrative law judge erred in failing to find the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(1), (a)(4) and that the Department of Labor did not 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 a remand for a complete pulmonary evaluation is not warranted in this case.²

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).

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as claimant was last employed in the coal mine industry in Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 3.

² The administrative law judge's length of coal mine employment determination and her findings 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).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered seven readings of three x-rays. The administrative law judge considered that Dr. Hussain, who is neither a B reader nor a Board-certified radiologist, read the October 30, 2002 x-ray as positive for pneumoconiosis, and that Drs. Spitz and Wiot, both of whom are dually qualified as Board-certified radiologists and B readers, read the x-ray as negative. Director's Exhibits 9, 10; Employer's Exhibit 2. Based on the superior qualifications of Drs. Spitz and Wiot, the administrative law judge found the October 30, 2002 x-ray to be negative for pneumoconiosis. Decision and Order Denying Benefits at 7. The administrative law judge found that the February 8, 2003 x-ray was read as positive for pneumoconiosis by Dr. Baker, a B reader, and as negative for pneumoconiosis by Dr. Wiot, a dually qualified radiologist. The administrative law judge found, relying on the superior qualifications of Dr. Wiot, that the February 8, 2003 x-ray was negative, and that "even setting aside Dr. Wiot's superior qualifications. . . the interpretations are in equipoise, and thus the x-ray is not positive for pneumoconiosis." *Id.* The administrative law judge also found the interpretations of the May 27, 2003 x-ray, read as positive by Dr. Cappiello and as negative for by Dr. Broudy, to be in equipoise. In so finding, the administrative law judge determined that Drs. Cappiello and Broudy are both dually qualified radiologists. *Id.* The administrative law judge found that "of the three x-rays in the record . . . none of them are positive," and therefore concluded that claimant did not establish the existence of pneumoconiosis by the x-ray evidence. Decision and Order at 7.

Claimant argues that the administrative law judge erred in her analysis of the most recent x-ray taken on May 27, 2003, because she found that Drs. Cappiello and Broudy are both dually qualified, although Dr. Broudy is merely a B reader. Claimant's contention has merit. Review of the record indicates that Dr. Cappiello is a Board-certified radiologist and B reader, while Dr. Broudy is qualified as a B reader. Claimant's Exhibit 1; Employer's Exhibit 1. Employer argues that the administrative law judge's error was harmless because Dr. Broudy's negative interpretation is "very credible" and the x-ray evidence "will still overwhelmingly support" the administrative law judge's finding. Employer's Brief at 11. Employer essentially asks us to weigh the x-ray evidence, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. Because the administrative law judge mischaracterized the qualifications of Dr. Broudy, and determined that the conflicting readings of the May 27, 2003 x-ray were in equipoise based on her erroneous analysis of the readers' qualifications, we must vacate her finding and remand this case for her to reconsider the x-ray evidence pursuant to Section 718.202(a)(1). See *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985).

Pursuant to Section 718.202(a)(4), the administrative law judge considered four medical opinions. Drs. Martin, Hussain, and Baker diagnosed claimant with pneumoconiosis, while Dr. Broudy concluded that claimant does not have

pneumoconiosis. Director's Exhibits 9, 18, 25; Employer's Exhibit 2. Claimant argues that the administrative law judge's erroneous determination of the x-ray evidence affected her weighing of the medical opinions under Section 718.202(a)(4). We agree. The administrative law judge found that claimant did not establish the existence of pneumoconiosis by a preponderance of the medical opinion evidence, and gave less weight to the opinions of Drs. Baker and Hussain in part because they were not supported by the objective medical evidence since she had found that the x-ray evidence "as a whole does not establish the existence of pneumoconiosis." Decision and Order Denying Benefits at 8. Additionally, the administrative law judge noted that Dr. Baker concluded that the pulmonary function study showed that claimant has a moderate to severe obstructive impairment due in part to coal dust exposure, and that Dr. Broudy attributed the obstructive impairment to cigarette smoking. *Id.* at 8, 9. In crediting Dr. Broudy's opinion, the administrative law judge found that Dr. Broudy opined that the pulmonary function study results obtained by Dr. Baker were valid, but that because claimant's x-ray findings were not consistent with the severity of the impairment shown by the pulmonary function studies, claimant's impairment was due to cigarette smoking. Decision and Order Denying Benefits at 6, 9; Employer's Exhibit at 2. Because the administrative law judge's rationale in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis was based in part on her analysis of the x-ray evidence, we vacate her finding and remand this case for her to reconsider the medical opinion evidence pursuant to Section 718.202(a)(4).

On remand, the administrative law judge must weigh together all of the relevant evidence to determine whether the existence of pneumoconiosis is established under Section 718.202(a). *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). In view of our disposition of this case, claimant's argument that he was not provided with a complete pulmonary evaluation is moot. Therefore, we need not address the issue.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part and vacated in part and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge