BRB No. 02-0754 BLA

CECIL WAYNE RAMEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MCI MINING CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
CLAIM SERVICES CORPORATION	)	
	)	
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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Zaring P. Robertson (Morgan, Madden, Brashear & Collins), Richmond Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (01-BLA-0821) of Administrative Law Judge Thomas F. Phalen, Jr. 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).[1] The administrative law judge accepted the parties

[1] The Department of Labor has amended the regulations implementing the Federal

stipulation of sixteen years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718 based on the date of filing. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis and a totally disabling respiratory impairment pursuant to Sections 718.202(a) and 718.204(b). Accordingly, benefits were denied.

On appeal, claimant contends that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and a totally disabling respiratory impairment pursuant to Section 718.204(b)(2)(i) and (iv). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, is not participating in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law, they are binding upon this Board and may not be disturbed. 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).

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. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Claimant first contends that the administrative law judge erred in not finding the existence of pneumoconiosis established at Section 718.202(a)(1) based on Dr. Sundaram's positive x-ray reading. The administrative law judge found that only one of the x-rays of record was read positive for the existence of pneumoconiosis and that reading was by Dr. Sundaram, a physician with no special qualifications, of an x-ray taken December 13, 1999. Director's Exhibit 26.[2] The administrative law judge found that the remaining x-rays taken February 2, 2000, June 11, 2000, November 6, 2000, and March 5, 2001 were all read negative and that ten of these negative readings were by Board-certified, B-readers. Thus, contrary to claimant's contention, the administrative law judge reasonably determined that the x-ray evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) based on the preponderance of negative readings by physicians with superior qualifications. Decision and Order at 12; Director's Exhibits 8-16; 20 C.F.R. §718.202(a)(1); *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). Further, contrary to claimant's argument, the administrative law judge's consideration of the x-ray evidence in this case, by inference, shows that he was aware that claimant's December 13, 1999 x-ray which was read positive by Dr. Sundaram, was not subsequently contradicted by employer's readers. In fact, the record shows that there were no additional readings of this x-ray. We are not, however, empowered to reweigh the evidence nor substitute our inferences for those of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 11 BLR 1-111, 1-113 (1989). Moreover, claimant states that the fact that claimant's evidence was outnumbered twelve to one is only a reflection of the relevative financial resources of the parties. The administrative law judge is charged, however, with weighing all the relevant evidence, *see* 5 U.S.C. §556(d), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a); *see Harlan Bell Coal Co. v. Lemar*, 904 F.2d 1042, 14 BLR 2-1 (6th Cir. 1990); *Cochran v. Consolidation Coal Co.*, 12 BLR 1-136 (1989), and it is within the discretion of the administrative law judge to limit the impact of evidence which he determines to be voluminous and duplicative evidence. *See Woodward, supra*; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Cochran, supra*.[3] The administrative law judge's finding at Section 718.202(a)(1) is, therefore, affirmed.

Claimant also contends that the administrative law judge erred in discounting the

[2] The record does not contain evidence that Dr. Sundaram has any specific qualifications to read x-ray evidence. Director's Exhibit 26.

[3] The amended regulation at 20 C.F.R. §725.414(a)(3)(i), which limits the submission of evidence by the responsible operator, applies only to claims filed after January 19, 2001. 20 C.F.R. §725.2.

opinion of Dr. Younes because Dr. Younes had never examined claimant, while according great weight to the opinions of Drs. Tuteur and Repsher, who had also failed to examine claimant. Likewise, claimant argues that the administrative law judge improperly discounted the opinion of Dr. Chaney, who was claimant's treating physician, while crediting the opinion of Dr. Dahhan, who never examined claimant.

In discussing the opinions at Section 718.202(a)(4), the administrative law judge discounted Dr. Younes's opinion diagnosing the existence of pneumoconiosis because not only was there no indication that Dr. Younes had ever examined, it could not be determined what, if any, evidence Dr. Younes had reviewed in making his determination. Accordingly, the administrative law judge properly found that Dr. Younes's opinion was not adequately documented. *See Furgerson v. Jericol Mining, Inc.*, 22 BLR 1-216 (2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*); *Minton v. Director, OWCP*, 6 BLR 1-670 (1983). Further, in discounting Dr. Chaney's opinion diagnosing pneumoconiosis, the administrative law judge, citing 20 C.F.R. §718.104(d), found that even though Dr. Chaney was claimant's treating physician, his opinion was not entitled to any greater weight because he had not seen claimant a sufficient number of times to develop a "superior understanding of claimant's condition" and because those visits had not included testing which provided the doctor with "superior and relevant information concerning claimant's condition." Decision and Order at 13. Accordingly, considering the conflicting opinions on the existence of pneumoconiosis, the administrative law judge properly discounted Dr. Chaney's opinion. *See* 20 C.F.R. §718.104(d); *Peabody Coal Co. v. Groves*, 277 F.3d 834, 22 BLR 2-320 (6th Cir. 2002); *Jericol Mining, Inc. v. Napier*, 2002 WL 1988221 (6th Cir. Aug. 30, 2002); *Wolf Creek Collieries v. Director, OWCP [Stephens]*, 2002 WL 1769283 (6th Cir. Aug. 2, 2002). Finally, contrary to claimant's contentions, the administrative law judge properly accorded greater weight to the opinions of Drs. Dahhan, Tuteur and Repsher because they had considered all the medical evidence of record in reaching their opinions and because of their superior qualifications. This was rational. *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997).[4] We therefore affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).[5]

[4] The administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2), (3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[5] Because we have affirmed the administrative law judge's finding that the existence

of pneumoconiosis was not established, an essential element of entitlement, we do not address claimant's contentions regarding total disability. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge