

BRB No. 04-0714 BLA

TERRY BELCHER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	DATE ISSUED: 04/26/2005
CORPORATION)	
)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Eugene D. Pecora, Beckley, West Virginia, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-0193) of Administrative Law Judge Daniel L. Leland (the administrative law judge) 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 although the evidence established total disability, it failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and it could not, therefore,

establish that claimant's total disability was due to pneumoconiosis.¹ Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge should have found that the medical opinion evidence established the existence of pneumoconiosis and that the pneumoconiosis was disabling. Employer responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs has filed a letter indicating that he will not file a response brief.²

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

After consideration of the administrative law judge's decision, the arguments raised on appeal, and the evidence of record, we conclude that the decision is supported by substantial evidence and contains no reversible error. The administrative law judge properly discredited the opinions of Drs. Boustani, Craft, and Rasmussen and the findings of the West Virginia Occupational Pneumoconiosis Board because he found their diagnoses of clinical pneumoconiosis to be based on positive x-rays when the weight of the x-ray evidence was negative and their findings were not supported by other medical evidence. This was proper. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 210, 22 BLR 2-162, 2-175 (4th Cir. 2000). Considering the evidence relevant to the existence of legal pneumoconiosis, the administrative law judge properly accorded little weight to the opinion of Dr. Rasmussen, attributing claimant's chronic bronchitis to coal dust exposure and cigarette smoking, because the doctor did not provide any support for his conclusion. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532 n.9, 21 BLR 2-323, 2-335 n.9 (4th Cir. 1998)(administrative law judge has discretion to disregard opinion unsupported by sufficient rationale); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Instead, the administrative law judge properly

¹ The administrative law judge's Decision and Order contains a description of the lengthy history of this case. Decision and Order at 2-3.

² No party challenges the administrative law judge's findings that the evidence fails to establish that the evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(3) or that the evidence establishes total respiratory disability pursuant to Section 718.204(b)(2)(i), (ii), (iv). Accordingly, we affirm those findings. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

credited the opinions of Drs. Tuteur and Zaldivar, who diagnosed bullous emphysema due to tobacco smoking, because they were better supported by the underlying evidence. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1986)(*en banc*); *Fields*, 10 BLR 1-19. In crediting the opinion of Dr. Tuteur, the administrative law judge stated that although Dr. Tuteur did not examine claimant, he did have the opportunity to examine all of the medical evidence in the record. *Compton*, 211 F.3d 203, 212, 22 BLR 2-162, 2-177 (2000)(administrative law judge may not discredit opinion solely because physician did not examine claimant); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1997)(no requirement that opinions of treating or examining physicians be given greater weight than opinions of other expert physicians); *Easthom v. Consolidation Coal Co.*, 7 BLR 1-582, 1-584 (1984). Likewise, contrary to claimant's argument, the administrative law judge properly considered all the opinion evidence, including the report of the West Virginia Occupational Pneumoconiosis Board, and weighed it with the x-ray evidence, to find that the preponderance of negative x-ray evidence supported the medical opinion evidence that claimant did not have pneumoconiosis. See *Compton*, 211 F.3d 203, 22 BLR 2-162; *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 339-340, 20 BLR 2-246 (4th Cir. 1996); *Schegan v. Waste Management and Processors, Inc.*, 18 BLR 1-41, 1-46 (1994). We, therefore, affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis. 20 C.F.R. §718.202. Because claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement, benefits must be denied. *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

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge