

BRB No. 05-0708 BLA

SCOTT YOUNG )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 ISLAND FORK CONSTRUCTION, )  
 LIMITED )  
 ) DATE ISSUED: 04/27/2006  
 and )  
 )  
 WEST VIRGINIA COAL WORKERS' )  
 PNEUMOCONIOSIS FUND )  
 )  
 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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

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

Robert Weinberger (West Virginia Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer/carrier.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-6223) of Administrative Law Judge Robert L. Hillyard 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). This case involves a claim filed on March 17, 2003. After crediting claimant with twenty-seven years of coal mine employment, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). Accordingly the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Claimant also argues that the administrative law judge erred in finding that claimant was not totally disabled. Claimant further contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim. Employer responds in support of the administrative law judge's denial of benefits. The Director has filed a limited response, requesting that the Board reject claimant's request that the case be remanded based upon the Director's failure to provide claimant with a complete, credible pulmonary evaluation.<sup>1</sup>

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

Claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The x-ray evidence consists of interpretations of two x-rays taken on July 3, 2003 and April 7, 2004. Although Dr. Simpao, a reader without any special radiological qualifications, interpreted claimant's July 3, 2003 x-ray as positive for pneumoconiosis, Director's Exhibit 13, Dr. Binns, a Board-certified radiologist and B reader, interpreted this x-ray as negative for the disease.<sup>2</sup> Employer's Exhibit 1 The

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<sup>1</sup>Because no party challenges the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(a)(4), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>2</sup>Dr. Barrett interpreted claimant's July 3, 2003 x-ray for quality purposes only. See Director's Exhibit 14.

administrative law judge acted within his discretion in crediting Dr. Binns's negative interpretation of claimant's July 3, 2003 x-ray over Dr. Simpao's positive interpretation of this film based upon Dr. Binns's superior qualifications. *See Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 8. The only other x-ray interpretation of record is negative for pneumoconiosis.<sup>3</sup> Because it is based upon substantial evidence,<sup>4</sup> the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) is affirmed.

Claimant also contends that the Director failed to provide him with a complete, credible pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required by the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *see Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990) (*en banc*); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). In this case, claimant selected Dr. Simpao to perform his Department of Labor sponsored pulmonary evaluation. *See* Director's Exhibit 13. Dr. Simpao examined claimant on July 3, 2003. In a report dated July 3, 2003, Dr. Simpao diagnosed coal workers' pneumoconiosis, 1/0.<sup>5</sup> *Id.*

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<sup>3</sup>Dr. Castle, a B reader, interpreted claimant's April 7, 2004 x-ray as negative for pneumoconiosis. Employer's Exhibit 2.

<sup>4</sup>In challenging the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis, claimant asserts that an administrative law judge "need not defer to a doctor with superior qualifications" and that an administrative law judge "need not accept as conclusive the numerical superiority of the x-ray interpretations." Claimant's Brief at 3. Claimant also asserts that the administrative law judge "may have 'selectively analyzed' the x-ray evidence." *Id.* In this case, the administrative law judge permissibly considered both the quality and the quantity of the x-ray evidence in finding it insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); *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). Moreover, claimant has provided no support for his assertion that the administrative law judge "may have 'selectively analyzed' the x-ray evidence."

<sup>5</sup>On its face, Dr. Simpao's opinion is complete. Dr. Simpao conducted a physical examination, recorded claimant's symptoms as well as his employment, medical and social histories, obtained an x-ray, EKG, pulmonary function and arterial blood gas studies, and addressed all of the elements of entitlement. *See* Director's Exhibit 13.

After finding that Dr. Simpao's positive x-ray interpretation was outweighed by the negative interpretation of a better qualified physician at Section 718.202(a)(1), the administrative law judge considered Dr. Simpao's diagnosis of pneumoconiosis, along with Dr. Castle's medical opinion, pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge found that Dr. Simpao's diagnosis of coal workers' pneumoconiosis did not constitute a well reasoned medical opinion sufficient to meet claimant's burden at Section 718.202(a)(4) because it was based solely upon a positive x-ray interpretation and claimant's coal mine employment history. Decision and Order at 10; Director's Exhibit 13. The Director correctly maintains that although Dr. Simpao's diagnosis of pneumoconiosis is insufficient to establish legal pneumoconiosis under 20 C.F.R. §718.202(a)(4), *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), it is a valid diagnosis of clinical pneumoconiosis under 20 C.F.R. §718.202(a)(1). Dr. Simpao's diagnosis of clinical pneumoconiosis, based upon a positive x-ray, was neither unreasoned nor undocumented. Although Dr. Simpao's pulmonary evaluation was complete, documented, and inherently credible, the administrative law judge found that Dr. Simpao's diagnosis of clinical pneumoconiosis was outweighed by the conflicting x-ray evidence of record. Under these circumstances, we agree with the Director, whose duty it is to ensure the proper enforcement and lawful administration of the Act, *see Hodges, supra; Pendley v. Director, OWCP*, 13 BLR 1-23 (1989) (*en banc*), that he provided claimant with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim.

In light of our affirmance of the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the evidence is insufficient to establish total disability. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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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BETTY JEAN HALL  
Administrative Appeals Judge