

BRB No. 07-0729 BLA

R.M.)
)
 Claimant-Petitioner)
)
 v.)
)
 MOUNTAIN COALS CORPORATION)
 c/o ACORDIA EMPLOYERS SERVICE)
) DATE ISSUED: 04/29/2008
 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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

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

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (05-BLA-6113) of Administrative Law Judge Donald W. Mosser 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 December 10, 2001. After crediting claimant with sixteen years of coal mine employment, the administrative law judge found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and 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 that the evidence did not 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 that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *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*).

Claimant contends that the administrative law judge erred in finding that the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).¹ The x-ray evidence consists of interpretations of two x-rays taken on January 30, 2002 and June 18, 2002. Although Dr. Alexander, a Board-certified radiologist and B reader, interpreted claimant's January 30, 2002 x-ray as positive for pneumoconiosis, Director's Exhibit 16, Dr. West, an equally qualified physician, interpreted this x-ray as negative for the disease.² Director's Exhibit 17. Because claimant's January 30, 2002 x-ray was read as both positive and negative by equally qualified physicians, the administrative law judge acted within his discretion in finding that the interpretations of this x-ray were "in equipoise" and, therefore, did not support a

¹ Because no party challenges the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² Dr. Hussain, a doctor without any special radiological qualifications, also interpreted claimant's January 30, 2002 x-ray as negative for pneumoconiosis. Director's Exhibit 14. Dr. Sargent, a B reader and Board-certified radiologist, interpreted claimant's January 30, 2002 x-ray for quality purposes only. Director's Exhibit 5.

finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); Decision and Order at 8. The administrative law judge noted that Dr. Dahhan, a B reader, interpreted claimant's June 18, 2002 x-ray as negative for pneumoconiosis and that there were no other interpretations of this x-ray. Decision and Order at 8; Director's Exhibit 44. Therefore, the administrative law judge found that the x-ray evidence did not establish the existence of pneumoconiosis.

The administrative law judge based his finding on a proper qualitative analysis of the x-ray evidence. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004). Consequently, claimant's arguments that the administrative law judge improperly relied on the readers' credentials, merely counted the negative readings, and that he "may have 'selectively analyzed'" the readings, lack merit.³ Claimant's Brief at 3. We, therefore, affirm the administrative law judge's finding that the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Claimant contends that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). However, claimant alleges no error in regard to the administrative law judge's consideration of the opinions of Drs. Prater, Hussain, Castle, and Dahhan.⁴ *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Because the Board is not empowered to engage in a *de novo* proceeding or unrestricted review of a case brought before it, the Board must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211, 802.301. Consequently, we affirm the

³ Claimant has provided no support for his assertion that the administrative law judge "may have 'selectively analyzed' the x-ray evidence." Claimant's Brief at 3.

⁴ The record does not contain any medical opinion evidence supportive of a finding of pneumoconiosis. Although Dr. Prater diagnosed chronic obstructive pulmonary disease with chronic bronchitis, he did not relate these conditions to claimant's coal dust exposure. Director's Exhibits 11, 12; *see* 20 C.F.R. §718.201(a)(2). Dr. Hussain diagnosed chronic obstructive pulmonary disease/emphysema due to cigarette smoking. Director's Exhibit 14. Dr. Hussain opined that claimant did not suffer from an occupational lung disease caused by his coal mine employment. *Id.* Dr. Castle opined that claimant did not suffer from coal workers' pneumoconiosis or any lung disease caused by, contributed to, or substantially aggravated by, coal dust exposure. Director's Exhibit 13. Dr. Dahhan opined that claimant did not suffer from coal workers' pneumoconiosis. Director's Exhibit 44.

administrative law judge's finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's findings that the evidence does not 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*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2. Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *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.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge