

BRB No. 05-0254 BLA

JOHN COLLETT)	
)	
Claimant-Petitioner)	
v.)	
)	
SHAMROCK COAL COMPANY,)	DATE ISSUED: 08/30/2005
INCORPORATED c/o ACORDIA)	
EMPLOYERS SERVICE)	
)	
and)	
)	
SUN COAL COMPANY, INCORPORATED)	
)	
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 – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Bell, Boyd & Lloyd, PLLC.), Washington, D.C., for employer/carrier.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor, Donald S. Shire, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (2003-BLA-6085) of Administrative Law Judge Daniel J. Roketenetz (the administrative law judge) 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). The administrative law judge found that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), total disability pursuant to 20 C.F.R. §718.204(b), or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Benefits were, accordingly, denied.¹

On appeal, claimant contends that the administrative law judge erred in finding that the x-ray and medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and (4). Claimant also contends that the administrative law judge erred in finding that the medical opinion evidence failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). Additionally, claimant contends that, in light of the administrative law judge’s finding that Dr. Hussain’s opinion was neither well-reasoned nor well-documented, the Department of Labor (DOL) failed to provide him with a complete and credible pulmonary evaluation pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b). Employer responds, urging affirmance of the administrative law judge’s denial of benefits. The Director, Office of Workers’ Compensation Programs, (the Director) responds, asserting only that Dr. Hussain’s medical report satisfied his obligation to provide claimant with a complete and credible pulmonary evaluation pursuant to Section 413(b) of the Act.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).

¹ This claim was filed with the Department of Labor on May 15, 2001. Director’s Exhibit 1.

² The administrative law judge’s finding that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (3) is affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove 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 one 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*).

Claimant first contends that the administrative law judge erred in failing to find that the x-ray evidence established the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Specifically, claimant asserts that the administrative law judge improperly relied upon the negative readings of physicians with superior credentials and the numerical superiority of negative readings to find the x-ray evidence insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1). Claimant also asserts generally that the administrative law judge "may" have "selectively analyzed" the x-ray evidence.

Contrary to claimant's contention, the administrative law judge conducted a proper qualitative and quantitative analysis of the x-ray evidence in this case by giving greater weight to the negative readings by physicians with superior radiological qualifications and to the numerical superiority of the negative x-ray readings. 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk & Western Railway 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); *see Worhach v. Director, OWCP*, 17 BLR 1- 105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). Accordingly, we reject claimant's argument regarding the administrative law judge's analysis of the x-ray evidence at Section 718.202(a)(1) and affirm his finding thereunder. In addition, we reject claimant's contention that the administrative law judge "may" have "selectively analyzed" the x-ray evidence, as claimant provides no support for this general allegation. *White v. New White Coal Co.*, 23 BLR 1-1, 1-5 (2004); *see Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986).

Claimant next contends that the administrative law judge erred in rejecting Dr. Baker's opinion finding the existence of pneumoconiosis for the reason that it was based solely on a positive x-ray reading. Claimant asserts that since Dr Baker's diagnosis of pneumoconiosis was based on, in addition to a positive x-ray, a physical examination, medical and work histories, a pulmonary function study, and an arterial blood gas study, it was a documented and reasoned opinion and should, therefore, have been credited. Claimant's Brief at 4-5.

In considering the opinion of Dr. Baker on the issue of pneumoconiosis, the administrative law judge properly accorded it less weight because he determined that Dr. Baker's diagnosis of pneumoconiosis was based on just a positive x-ray and coal dust

exposure history.³ The administrative law judge further found that Dr. Baker's diagnosis of bronchitis was insufficient to establish legal pneumoconiosis because Dr. Baker did not relate the bronchitis to claimant's coal mine employment. 20 C.F.R. §718.201. In contrast, the administrative law judge found that Drs Dahhan and Broudy concluded that claimant did not have pneumoconiosis based on a negative x-ray, the normal results of diagnostic tests, and their physical evaluations of claimant. This was reasonable. See *Eastover Mining Co. v. Williams*, 338 F.2d 501, 22 BLR 2-625 (6th Cir. 2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach*, 17 BLR at 1-110; *Trumbo v. Director, OWCP*, 17 BLR 1-85, 1-89 n.4 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); *Lucostic v. Director, OWCP*, 8 BLR 1-46, 1-47 (1985).

Claimant also contends that because the administrative law judge rejected Dr. Hussain's opinion on the existence of pneumoconiosis, the Director has failed to provide him with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act. The record reflects that Dr. Hussain conducted an examination and a full range of testing required by the regulations, and that he addressed each element of entitlement on the DOL examination form. 20 C.F.R. §§718.101(a); 718.104, 725.406(a); Director's Exhibit 14. In considering the opinion of Dr. Hussain, as to the existence of pneumoconiosis, the administrative law judge did not reject Dr. Hussain's opinion, rather he found that the opinions of Drs. Dahhan and Broudy were better supported by their underlying documentation than Dr. Hussain's and, therefore, found Dr. Hussain's opinion "outweighed" by the opinions of Drs. Dahhan and Broudy. Decision and Order at 11. This was proper. See *Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 1166, 7 BLR 2-25, 2-31 (8th Cir. 1984). Claimant's contention that the Director did not fulfill his statutory obligation of providing claimant with a complete and credible pulmonary evaluation is, therefore, rejected. Accordingly, the administrative law judge's finding that the medical opinion evidence does not establish the

³ On the "Medical Report of Dr. Glen Ray Baker, Jr." under the heading "DIAGNOSIS" Dr. Baker's diagnosis of coal workers' pneumoconiosis Category 1/0 is expressly "based on abnormal x-ray and significant history of dust exposure." Director's Exhibit 9 at 3.

In his discussion of the x-ray evidence, the administrative law judge also noted that the March 31, 2001 x-ray read positive by Dr. Baker, was read negative by a better qualified reader. Decision and Order at 5-6; Director's Exhibits 9, 13.

existence of pneumoconiosis is affirmed. Because the administrative law judge found that the existence of pneumoconiosis, an essential element of entitlement, was not established, entitlement to benefits is precluded and we need not reach claimant's argument on total disability at Section 718.204(b)(2)(iv). *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1; *Wetzel*, 8 BLR at 142-43.

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge