BRB No. 05-0312 BLA

EARL BROCK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
IKERD BANDY COMPANY, INCORPORATED	)	
	)	
	)	DATE ISSUED: 08/04/2005
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 – Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

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

Timothy J. Walker (Ferreri & Fogle), Lexington, Kentucky, for employer.

Helen H. Cox (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 HALL, Administrative Appeals Judges.

DOLDER, Chief Administrative Appeals Judge:

Claimant appeals the Decision and Order (03-BLA-5658) of Administrative Law Judge Thomas F. Phalen, Jr., 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). The instant case involves a subsequent claim filed on

February 12, 2001.[1] 20 C.F.R. §725.309. After crediting claimant with twenty-one years of coal mine employment, the administrative law judge found that the newly submitted medical evidence did not establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge therefore found that none of the applicable conditions of entitlement had changed since the denial of claimant's prior 1997 claim. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the newly submitted 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)(2)(iv). Claimant alleges further that the Department of Labor (DOL) failed to provide him with a complete and credible pulmonary evaluation sufficient to substantiate his claim. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds and asserts that he met his obligation to provide claimant with a complete and credible pulmonary evaluation.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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, 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, 718.201, 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*).

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[1] Claimant initially filed a claim for benefits on September 4, 1997. Director's Exhibit 1. The district director denied the claim on December 19, 1997 because claimant did not establish the existence of pneumoconiosis or that he was totally disabled. *Id.* There is no indication that claimant took any further action on his 1997 claim.

[2] Because no party challenges the administrative law judge's findings that the newly submitted evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3) or total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because he failed to establish either the existence of pneumoconiosis or that he was totally disabled by a respiratory or pulmonary impairment. Director's Exhibit 1. Consequently, claimant had to submit new evidence establishing either of these elements of entitlement to proceed with his claim. 20 C.F.R. §725.309(d)(2),(3); *see also Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994)(holding under former provision that claimant must establish, with qualitatively different evidence, one of the elements of entitlement that was previously adjudicated against him).

After considering the administrative law judge's Decision and Order, the arguments of the parties and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error.

Claimant contends that the administrative law judge erred in finding that the x-ray evidence submitted since the previous denial failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant asserts that the administrative law judge improperly relied on the superior qualifications of the readers who did not interpret the x-rays as positive, improperly gave greater weight to the numerical superiority of the negative x-ray readings, and "may have" selectively analyzed the evidence. Claimant's Brief at 3. We disagree.

In weighing the relevant x-ray evidence, the administrative law judge discussed all four readings of the three newly submitted x-rays. Decision and Order at 5, 10; Director's Exhibits 10, 13, 20. The administrative law judge noted that the March 24, 2001, x-ray was interpreted as positive by one physician, Dr. Baker, who possessed no special radiological qualifications. Decision and Order at 5, 10; Director's Exhibit 13. The administrative law judge next noted that the April 27, 2001, x-ray was interpreted as positive by one physician, Dr. Hussain, who possessed no special radiological qualifications, and that it was also interpreted as negative by one physician, Dr. Barrett, who is a Board-certified radiologist and a B reader. Decision and Order at 5, 10; Director's Exhibits 10, 20. The administrative law judge next noted that the May 31, 2001, x-ray was interpreted as negative by one B reader, Dr. Broudy. Decision and Order at 5, 10; Director's Exhibit 13. The administrative law judge thus rationally accorded greater weight to the preponderance of the x-ray interpretations by the readers with superior qualifications and reasonably found that the preponderance of the x-ray evidence

was negative in concluding that the x-ray evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Trent*, 11 BLR 1-26; *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). In addition, we reject claimant's general contention that the administrative law judge may have "selectively analyzed" the x-ray evidence. Claimant's Brief at 3. As the administrative law judge weighed all of the x-ray evidence and reasonably found that it did not establish the existence of pneumoconiosis, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(1).

Claimant also contends that the administrative law judge erred in finding the newly submitted medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). The record contains three newly submitted medical opinions. While Drs. Baker and Hussain diagnosed pneumoconiosis, Dr. Broudy opined that claimant did not suffer from the disease. Decision and Order at 6-7, 11; Director's Exhibits 10, 13. Claimant specifically contends that the administrative law judge erred in rejecting Dr. Baker's report because the doctor's opinion was "based merely on an x-ray interpretation." Claimant's Brief at 4. We do not find merit in claimant's contention. The administrative law judge permissibly discredited Dr. Baker's diagnosis of coal workers' pneumoconiosis because it was based solely on his x-ray reading and a reference to claimant's coal mine employment history. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-123 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). The administrative law judge acted within his discretion in according determinative weight to the contrary opinion of Dr. Broudy, which the administrative law judge found well documented and reasoned. Decision and Order at 12; *see Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Claimant challenges these findings on the basis that "the report and opinion of Dr. Baker is well reasoned" and should not have been rejected. Claimant's Brief at 5. Claimant merely requests a reweighing of the evidence, which we cannot do. *Anderson*, 12 BLR at 1-113.

Claimant next contends that because the administrative law judge did not credit the diagnosis of pneumoconiosis contained in Dr. Hussain's April 27, 2001 opinion provided by DOL, "the Director has failed to provide the claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 5. The Director responds, acknowledging that he must provide a medical opinion that addresses all elements of entitlement. Director's Brief at 2. The Director further notes that "[w]hile the Department-sponsored evaluation report must be credible, there is no requirement that the report of the Department-sponsored evaluation

be dispositive or even favor the miner."[3] *Id.* The record reflects that Dr. Hussain conducted an examination and the full range of testing required by the regulations, and 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 10. The administrative law judge did not find, nor does claimant allege, that Dr. Hussain's report was incomplete.[4] Claimant asserts, however, that the administrative law judge found Dr. Hussain's report inadequately documented and reasoned since the doctor "failed to take into account claimant's coal mine employment, and because said physician based his report solely upon an x-ray interpretation." Claimant's Brief at 5; *see* Decision and Order at 11. In evaluating Dr. Hussain's report on the issue of the existence of pneumoconiosis, the administrative law judge stated:

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[3] The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406. The Director fails to meet this duty where "the administrative law judge finds a medical opinion incomplete," or where "the administrative law judge finds that the opinion, although complete, lacks credibility." *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n. 3 (1994); *accord 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).

[4] The administrative law judge summarized Dr. Hussain's opinion thusly:

> Dr. Imtiaz Hussain, who is board certified in internal medicine and pulmonary disease, examined the Claimant on April 27, 2001. (DX 10; CX 2). Based on symptomatology (an off-and-on cough, wheezing, and dyspnea), no reference to any employment history, individual history (wheezing, heart disease, diabetes, and high blood pressure), family histories (cancer), smoking history (one pack of cigarettes a day for 48 years before quitting seven years ago), physical examination (bilateral crackles), chest x-ray (pneumoconiosis), PFT (restrictive ventilatory defect), ABG (moderate hypoxemia), and an EKG (sinus tachycardia), Dr. Hussain diagnosed claimant as having pneumoconiosis due to dust exposure; coronary artery disease due to atherosclerosis; and chronic obstructive pulmonary disease due to smoking. His opinion was based on the x-ray, the pulmonary function test, and the Claimant's dust exposure history.
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> Decision and Order at 6; Director's Exhibit 10.

> Dr. Hussain failed to take into account Mr. Brock's coal mine employment history. Accordingly, I do not consider his report to be adequately documented and reasoned. *See Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Furthermore, the x-ray on which he relied was reread as negative by a better qualified reader. The final basis for Dr. Hussain's conclusion was the pulmonary function study of April 27, 2001. However, Dr. Hussain himself noted repeated coughing during the test, and the study was found invalid due to suboptimal effort and incorrect performance. (DX 10). For these reasons, I find Dr. Hussain's opinion poorly documented and reasoned. Thus, I place no weight on it.

Decision and Order at 11.

In response to claimant's assertion that Dr. Hussain's failure to detail the length of claimant's coal mine employment renders the doctor's opinion incomplete, the Director argues that the mere fact that the administrative law judge found that Dr. Hussain's opinion was flawed on this basis does not mean that the Director failed to satisfy his statutory obligation. The Director asserts that Dr. Hussain's failure to record claimant's coal mine employment history did not affect his ability to diagnose pneumoconiosis. Director's Brief at 3. As the Director points out, Dr. Hussain's diagnosis of pneumoconiosis at Section 718.202(a)(4) reiterated his positive x-ray reading, but the administrative law judge stated that Dr. Hussain's diagnosis of pneumoconiosis based on the x-ray was outweighed by the negative interpretation of that x-ray by a physician with superior qualifications. *Staton*, 65 F.3d 55, 19 BLR 2-271; *Edmiston*, 14 BLR 1-65; *Trent*, 11 BLR 1-26; *Roberts*, 8 BLR 1-211. As such, the administrative law judge permissibly found that to the extent Dr. Hussain diagnosed pneumoconiosis based upon the April 27, 2001, x-ray that was reread as negative by Dr. Barrett, a dually qualified physician, Dr. Hussain's diagnosis was against the weight of the evidence.[5] *See Eastover*

[5] The record reflects that Dr. Hussain conducted an examination and the full range of testing required by the regulations, and addressed each element of entitlement on the examination form. The administrative law judge, however, also found that Dr. Hussain's opinion was entitled to diminished weight because it was based in part upon an invalid pulmonary function study. Decision and Order at 11. In compliance with the applicable regulation, and as part of Dr. Hussain's evaluation, claimant underwent a pulmonary function study on April 27, 2001, which was invalidated due to suboptimal effort. Decision and Order at 5 n.6; Director's Exhibit 10. Consequently, in accordance with 20 C.F.R. §725.406(c), the Director provided claimant with a second pulmonary function study on June 29, 2001, so that claimant would have another opportunity to produce satisfactory results with adequate effort, but this study was invalidated by Dr. Burki due to suboptimal effort. Decision and Order at 5 n.7; Director's Exhibit 10. Thus, claimant

Mining Co. v. Williams, 338 F.3d 501, 514, 22 BLR 2-625, 2-648-49 (6th Cir. 2003). Because Dr. Hussain's report was substantially complete, there is no merit to claimant's argument that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. *Cf. Hodges v. BethEnergy Mines*, 18 BLR 1-84, (1994).

Because claimant does not assert any additional error, and since the administrative law judge's finding that the newly submitted medical opinions of record are insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4) is supported by substantial evidence, the administrative law judge's finding is affirmed.

Claimant also contends that the administrative law judge erred in finding that the newly submitted medical opinion evidence did not establish total disability pursuant to Section 718.204(b)(2)(iv). While Drs. Baker and Hussain opined that claimant was totally disabled, Dr. Broudy opined that claimant was not totally disabled. Decision and Order at 6-7, 13-14; Director's Exhibits 10, 13. The administrative law judge initially found that Dr. Baker's opinion,[6] as well as Dr. Hussain's opinion, were deficient, not entitled to "probative weight," and were insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv). Decision and Order at 13-14. The administrative law judge

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was provided two opportunities to satisfactorily perform a pulmonary function study pursuant to 20 C.F.R. §725.406(c), and failed to do so.

[6] Dr. Baker opined that:

> Patient has a Class II impairment based on the FEV1 between 60% and 80% of predicted. This is based on Table 5-12, Page 107, Chapter Five, Guides to the Evaluation of Permanent Impairment, Fifth Edition.
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> Patient has a second impairment based on Section 5.8, Page 106, Chapter Five, Guides to Evaluation of Permanent Impairment, Fifth Edition, which states that persons who develop pneumoconiosis should limit further exposure to the offending agent. This would imply the patient is 100% occupationally disabled for work in the coal mining industry or any similar dusty occupation.

Decision and Order at 6; Director's Exhibit 13.

next found that the contrary opinion of Dr. Broudy[7] was well reasoned and documented and entitled to "probative weight" regarding whether claimant was totally disabled pursuant to Section 718.204(b)(2)(iv). Decision and Order at 14. The administrative law judge therefore found that claimant failed to establish, by a preponderance of the newly submitted medical opinion evidence, that he was totally disabled pursuant to Section 718.204(b)(2)(iv). *Id.*

Claimant contends that the administrative law judge erred in finding that the opinion of Dr. Baker was insufficient to establish total disability. The administrative law judge permissibly found that Dr. Baker's diagnosis of a "Class II" impairment was insufficient to support a finding of total disability because the doctor failed to explain the meaning of such a diagnosis. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); Decision and Order at 13; Director's Exhibit 13. In addition, the administrative law judge noted that Dr. Baker also opined that because persons who develop pneumoconiosis should limit their further exposure to coal dust, it could be implied that claimant was 100% occupationally disabled for work in the coal mining industry. Director's Exhibit 17. The administrative law judge correctly found, however, that since a doctor's recommendation against further coal dust exposure is insufficient to establish a totally disabling respiratory impairment, *see Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989), this second aspect of Dr. Baker's opinion was also insufficient to support a finding of total disability. *Id.* Additionally, claimant contends that the administrative law judge erred in failing to compare claimant's usual coal mine work[8] with Dr. Baker's Class II impairment rating. Claimant's Brief at 8. Contrary to claimant's contention, the administrative law judge found that Dr. Baker's impairment rating was not credible because it was unexplained. *See Clark*, 12 BLR at 1-155. Under those circumstances, it was unnecessary for the administrative law judge to compare claimant's work requirements with Dr. Baker's

[7] The administrative law judge stated that "Dr. Broudy opined that there has not been any significant pulmonary disease or respiratory impairment that has arisen from Claimant's coal mine employment." Decision and Order at 7, 14; Director's Exhibit 13. The administrative law judge noted that Dr. Broudy's "opinion is bolstered by the valid pulmonary function studies of record and all of the blood gas study evidence, as well as his clinical findings." *Id*

[8] The administrative law judge noted that claimant's last coal mine employment "required constant standing and heavy lifting, and . . . some bending, crawling, and stooping." Decision and Order at 4. The administrative law judge determined that "[c]laimant's coal mine employment required moderately heavy manual labor at times." Decision and Order at 17.

opinion.[9] Having permissibly found that the preponderance of the newly submitted medical opinion evidence does not support a finding of total pulmonary disability, the administrative law judge properly found that the newly submitted medical opinion evidence is insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv).[10] Accordingly, we affirm the administrative law judge's finding that claimant failed to demonstrate total respiratory disability by the newly submitted medical opinion evidence. *See* 20 C.F.R. §718.204(b)(iv); *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Claimant has the general burden of establishing entitlement and bears the risk of non-persuasion if his evidence is found insufficient to establish a crucial element of entitlement. *See Trent*, 11 BLR at 1-27; *White v. Director, OWCP*, 6 BLR 1-368 (1983). Furthermore, the administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *Anderson*, 12 BLR at 1-113; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987).

In light of our affirmance of the administrative law judge's findings that the newly submitted evidence is insufficient to 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)(2)(i)-(iv), we affirm the administrative law judge's finding that claimant failed to establish that any of the applicable elements of entitlement has changed since the denial of his prior claim. 20 C.F.R. §725.309.

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[9] Citing *Bentley v. Director, OWCP*, 7 BLR 1-612 (1984), claimant also asserts that the administrative law judge erred in failing to mention his age, education, or work experience in conjunction with the administrative law judge's assessment that the claimant was not totally disabled. Claimant's Brief at 8. Claimant's age, education, and work experience were relevant to establishing total respiratory disability at 20 C.F.R. Part 410. Because claimant filed his claim subsequent to March 31, 1980, however, the provisions of 20 C.F.R. Part 718, rather than 20 C.F.R. Part 410, are to be applied. 20 C.F.R. §718.2; *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986).

[10] Claimant asserts that a single medical opinion supportive of a finding of total disability is "sufficient for invoking the presumption of total disability." Claimant's Brief at 6. Claimant has not identified any presumption of total disability that is applicable in this case.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

I concur:

ROY P. SMITH
Administrative Appeals Judge

HALL, Administrative Appeals Judge, dissenting:

I respectfully dissent from my colleagues in that I would hold that this case must be remanded to the district director for a complete, credible pulmonary examination as required by the Act. 30 U.S.C. §923(b).

First, I disagree with the majority's statement that Dr. Hussain's opinion was complete. The administrative law judge specifically found that Dr. Hussain's opinion was incomplete, because Dr. Hussain failed to take into account claimant's coal mine employment, and gave no indication that he knew the type of work that claimant did or what the exertional requirements of claimant's job were. While the Director argues that Dr. Hussain's failure to consider the length of claimant's coal mine employment did not affect Dr. Hussain's ability to diagnose clinical coal workers' pneumoconiosis, the Director ignores that Dr. Hussain also diagnosed chronic obstructive pulmonary disease that he related solely to smoking. Director's Exhibit 10 at 4. Since chronic obstructive pulmonary disease, if related to coal mine dust exposure, can constitute pneumoconiosis under the Act and regulations, I conclude that Dr. Hussain's failure to consider claimant's twenty-one years of coal mine dust exposure may indeed have affected Dr. Hussain's ability to diagnose pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2).

Second, I believe we must recognize that the administrative law judge found that Dr. Hussain's opinion was not credible. *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-

88 n.3 (1994). On the issue of the existence of pneumoconiosis, the administrative law judge specifically determined that Dr. Hussain's opinion was "poorly documented and reasoned" and merited "no weight."[11] Decision and Order at 12. This finding was supported by substantial evidence, as Dr. Hussain did not consider claimant's coal mine employment history. On the issue of total disability, the administrative law judge found that Dr. Hussain's opinion was "not . . . entitled to probative weight" because it was not well documented or reasoned. Decision and Order at 14. The administrative law judge was correct in finding that he could not consider Dr. Hussain's opinion well documented or reasoned or give it probative weight, when there was no indication that Dr. Hussain knew claimant's job or understood its exertional requirements. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). In sum, I am unable to conclude that an opinion that received zero weight on both elements of entitlement at issue because it was found incomplete and not credible, nevertheless met the Director's obligation to provide the miner "an opportunity to substantiate his . . . claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b).

Consequently, I would remand this case to the district director for claimant to be provided with a complete and credible pulmonary evaluation pursuant to 30 U.S.C. §923(b).

BETTY JEAN HALL
Administrative Appeals Judge

[11] I am troubled by the Department's apparent practice of submitting x-ray readings by doctors lacking radiological credentials, when the Department's regulations require consideration of the readers' radiological credentials where the x-rays are in conflict. 20 C.F.R. §718.202(a)(1). In the case at bar, the administrative law judge discredited Dr. Hussain's diagnosis because Dr. Hussain had relied on his own positive x-ray reading, a reading that the administrative law judge rejected because Dr. Hussain "has no particular qualifications for x-ray interpretation." Decision and Order at 10.