BRB No. 06-0145 BLA

LONNIE ROBINSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ANADALEX RESOURCES, INCORPORATED	)	DATE ISSUED: 08/23/2006
	)	
	)	
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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

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

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

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 – Denying Benefits (04-BLA-5388) of Administrative Law Judge Rudolf L. Jansen on a claim[1] 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 initially credited claimant with fifteen years of qualifying coal mine employment. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total respiratory disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find the existence of pneumoconiosis established by x-ray evidence under Section 718.202(a)(1) and total respiratory disability established under Section 718.204(b)(2)(iv). Claimant additionally contends that because the administrative law judge discredited the medical opinion regarding the existence of pneumoconiosis of Dr. Baker, the physician who examined him at the behest of the Department of Labor, the Director, Office of Workers' Compensation Programs, (the Director) has failed to provide claimant with a complete and credible pulmonary evaluation as required by Section 413(b) of the Act, 30 U.S.C. §923(b), to substantiate his claim. In response, employer urges affirmance of the denial of benefits. The Director, as party-in-interest, also responds, arguing that he has satisfied his obligation to provide claimant with a complete, credible pulmonary evaluation as required by 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 the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In challenging the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1), claimant argues that the administrative law judge erred by placing substantial weight on the numerical superiority of the negative x-ray interpretations and by relying exclusively on the

[1] Claimant, Lonnie Robinson, filed an application for benefits on May 29, 2001. Director's Exhibit 2.

[2] We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(2)-(a)(4), 718.204(b)(2)(i)-(iii) inasmuch as these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 4-5, 9-11.

qualifications of the physicians providing those x-ray interpretations. Claimant contends that the administrative law judge is not required either to defer to a physician with superior qualifications or to accept as conclusive the numerical superiority of x-ray interpretations. Claimant further contends that the administrative law judge "may have selectively analyzed" the x-ray evidence. Claimant does not otherwise challenge the weighing of the evidence as to the existence of pneumoconiosis, except insofar as he avers that the Director failed to provide him with a complete pulmonary evaluation as required by the Act.

Contrary to claimant's argument, where x-ray evidence is in conflict, consideration shall be given to the readers' radiological qualifications. 20 C.F.R. §718.202(a)(1). Thus, in the instant case, the administrative law judge properly found that the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis inasmuch as all four interpretations[3] of the x-rays of November 6, 2001 and November 2, 2004, including the readings provided by the dually-qualified radiologists, were negative for the existence of pneumoconiosis. 20 C.F.R. §718.202(a)(1); *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 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); *Langerud v. Director, OWCP*, 9 BLR 1-101, 1-103 (1986); Decision and Order at 9; Director's Exhibits 11, 12, 20; Employer's Exhibits 2, 5. Accordingly, as the administrative law judge conducted both a qualitative and quantitative assessment of the x-ray evidence, we affirm his determination that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *See 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. 1994); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). In addition, we reject claimant's contention that the administrative law judge "may have selectively analyzed" the x-ray evidence inasmuch as claimant has not provided any support for that assertion, nor does a review of the evidence and the administrative law judge's Decision and Order reveal that he engaged in a selective analysis of the x-ray evidence. *See White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-4 (2004).

Claimant also argues that, in rendering his finding that claimant was not totally disabled pursuant to Section 718.204(b)(2)(iv), the administrative law judge erred in failing to consider the exertional requirements of claimant's usual coal mine work as a foreman and equipment operator in conjunction with the medical reports assessing a disability. Claimant contends that, considering the heavy concentrations of dust exposure

[3] Dr. Sargent read the November 6, 2001 film for quality only. Director's Exhibit 12.

he received on a daily basis, his condition precludes him from engaging in his usual employment in such a dusty environment. Because the administrative law judge correctly found that all three physicians of record, Drs. Baker, Rosenberg, and Fino, opined that claimant retained the physiological capacity to continue his previous coal mine employment and did not suffer from any respiratory or pulmonary impairment, the administrative law judge properly concluded that the medical opinion evidence was insufficient to demonstrate that claimant was totally disabled by a respiratory or pulmonary impairment pursuant to Section 718.204(b)(2)(iv). *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172-173, 21 BLR 2-34, 2-45-46 (4th Cir. 1997) (consideration of miner's exertional requirements not necessary where physician's opinion finding no impairment is credited); Decision and Order at 11-12. Accordingly, we reject claimant's arguments and affirm the administrative law judge's determination that claimant failed to satisfy his burden of demonstrating total respiratory disability pursuant to Section 718.204(b)(2)(iv). *See White*, 23 BLR at 1-6-7; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83, 1-87 (1988); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*).

In addition, the administrative law judge properly considered the opinions of Drs. Baker, Rosenberg, and Fino finding no totally disabling respiratory or pulmonary impairment along with the two pulmonary function studies of record which were non-qualifying and the two arterial blood gas studies of record which were non-qualifying. Decision and Order at 12. After weighing all the evidence relevant to Section 718.204(b)(2)(i)-(iv), the administrative law judge rationally found that the evidence of record failed to affirmatively establish total respiratory disability. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (*en banc*). Because claimant has not otherwise challenged the administrative law judge's credibility determinations pursuant to Section 718.204(b)(2)(i)-(iv), we affirm the administrative law judge's determination that claimant failed to satisfy his burden of demonstrating total respiratory disability pursuant to Section 718.204(b)(2). *See Fields*, 10 BLR at 1-19; *Gee*, 9 BLR at 1-4; *see also White*, 23 BLR at 1-7.

Additionally, claimant contends that the Director has failed to provide claimant with a complete, credible pulmonary evaluation, because the administrative law judge discredited the opinion of Dr. Baker, the physician who conducted claimant's pulmonary evaluation at the behest of the Department of Labor, on the basis that the doctor's opinion concerning the existence of pneumoconiosis was "internally inconsistent and unreliable." Claimant's Brief at 4. In response, the Director asserts that while the administrative law judge found that Dr. Baker's opinion regarding the existence of pneumoconiosis was internally inconsistent and unreliable, the Director nonetheless provided claimant with a complete, pulmonary evaluation because Dr. Baker administered relevant tests, recorded

relevant histories, and addressed each element of entitlement; the administrative law judge, accordingly, afforded the opinion some weight.[4] Further, the Director avers that inasmuch as the administrative law judge credited Dr. Baker's opinion on the issue of total disability, claimant has been provided with a complete, pulmonary evaluation.

In assessing the credibility of the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge found that Dr. Baker's opinion on the issue of the existence of pneumoconiosis was "internally inconsistent and unreliable" and entitled to "little probative weight" because Dr. Baker diagnosed chronic bronchitis caused by "coal dust exposure/cigarette smoking," which was sufficient to establish the existence of legal pneumoconiosis as defined in Section 718.201(a), but then checked the "No" box when questioned as to whether the miner had an occupational lung disease caused by coal mine employment. Decision and Order at 10; Director's Exhibit 11. In addressing total disability, however, the administrative law judge fully credited Dr. Baker's opinion that claimant was not disabled, and properly found that claimant failed to establish that he was totally disabled. Accordingly, even if claimant did not receive a complete pulmonary examination as to the existence of pneumoconiosis, there is no need to remand this case as claimant failed to establish total respiratory disability, a necessary element of entitlement. *See Gee*, 9 BLR at 1-4.

We affirm, therefore, the administrative law judge's determinations that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and total respiratory disability pursuant to Section 718.204(b)(2)(iv) inasmuch as these findings are rational, contain no reversible error, and are supported by substantial evidence. Inasmuch as claimant has failed to satisfy his burden of establishing total respiratory disability, a requisite element of entitlement under Part 718, we decline to address claimant's argument concerning whether claimant was provided with a complete credible pulmonary evaluation on the existence of pneumoconiosis at Section 718.202(a)(4).

[4] Further, the Director believes that Dr. Baker diagnosed "legal" pneumoconiosis in his report and indicated that claimant did not have clinical pneumoconiosis on the supplementary questionnaire, suggesting that the opinion was not internally inconsistent.

Accordingly, the Decision and Order – Denying Benefits of the administrative law judge 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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JUDITH S. BOGGS
Administrative Appeals Judge