

BRB No. 06-0232 BLA

PHILLIP JACKSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
IKERD BANDY COMPANY, INCORPORATED)	DATE ISSUED: 08/09/2006
)	
and)	
)	
SECURITY INSURANCE COMPANY OF HARTFORD)	
)	
Employer-Carrier)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Respondent)	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.

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 HALL,
Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (04-BLA-5256) of

Administrative Law Judge Rudolf L. Jansen (the administrative law judge) 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 was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied the claim.

On appeal, claimant challenges the administrative law judge's finding that the x-ray interpretation evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant also contends that the administrative law judge erred when he found that the medical opinion evidence failed to establish a total respiratory disability pursuant to Section 718.204(b)(2)(iv). Additionally, claimant contends that 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 award of benefits. The Director, Office of Workers' Compensation Programs, (the Director) responds, asserting that Dr. Simpao's medical report satisfies his obligation to provide claimant with a complete and credible pulmonary evaluation pursuant to Section 413(b) of the Act.¹

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).

Claimant first contends that the administrative law judge erred in failing to find that the x-ray interpretation evidence established the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant asserts that the administrative law judge improperly relied upon the interpretations by physicians with superior credentials and the numerical superiority of the negative x-ray readings, noting that the Board has held that he is not required to defer to doctors with superior qualifications, nor is he required to accept as conclusive the numerical superiority of the negative x-ray interpretations. Claimant's Brief at 2-3.

The administrative law judge considered the interpretations of two x-rays in conjunction with the readers' radiological qualifications and noted that there were two

¹ The administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4) 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).

negative interpretations and one positive interpretation.² Decision and Order at 8. The administrative law judge noted that the two negative readings, were by physicians who were B-readers, *Id*; Employer's Exhibits 2, 4, while the only positive reading was by a physician who possessed no special radiological qualifications. Decision and Order at 8; Director's Exhibit 9. On weighing the conflicting evidence, the administrative law judge permissibly accorded greater weight to the negative interpretations by the physicians who possessed superior radiological qualifications than to the physician who possessed no special radiological qualifications. This was a proper qualitative and quantitative analysis of the x-ray interpretation evidence. 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); *Staton v. Norfolk and 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); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 8.

In addition, we reject claimant's contention that the administrative law judge may have "selectively analyzed" the x-ray evidence. Claimant's Brief at 3-4. Claimant cites to nothing in the record to support his speculation, and a review of the evidence, together with the administrative law judge's Decision and Order, does not reveal a selective analysis of the x-ray evidence. See *White v. New White Coal Co.*, 23 BLR 1-1, 1-7 (2004). We affirm, therefore, the administrative law judge's finding that the x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1).³

Claimant next asserts that because the administrative law judge did not credit Dr. Simpao's May 9, 2002 medical opinion which was provided to claimant by the DOL, "the Director has failed to provide claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 4. The record reflects that Dr. Simpao conducted an examination and a full range of testing required by the regulations, and that he addressed each element of entitlement on the DOL

² Dr. Barrett reread the May 9, 2002 x-ray, and noted only that the film quality was "1", the highest quality possible, without commenting on whether the film was positive or negative for pneumoconiosis. Director's Exhibit 9.

³ We need not address the administrative law judge's findings that the evidence fails to establish total respiratory disability pursuant to Section 718.204(b), as they are rendered moot by our disposition of the case. See *Cochran v. Director, OWCP*, 16 BLR 1-101(1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

examination form. 20 C.F.R. §§718.101(a); 718.104, 725.406(a); Director's Exhibit 9. Claimant does not allege, nor did the administrative law judge find, that Dr. Simpao's report was incomplete. Instead, the administrative law judge found that Dr. Simpao's report was outweighed by Dr. Broudy's opinion which he found to be better reasoned. Decision and Order at 9, 11. This was proper. See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath*, 12 BLR at 1-9-10; *Cooper v. Director, OWCP*, 11 BLR 1-95 (1988)(Ramsey, CJ, concurring); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). As the Director asserts, the mere fact that the administrative law judge found other medical opinions more persuasive does not mean that the Director failed to satisfy his statutory obligation of providing claimant with a complete, credible pulmonary examination. See 30 U.S.C. §923(b), as implemented by 20 C.F.R. §§718.101(a), 725.406. The Director only 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," and is not entitled to any weight at all. *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88, n. 3 (1994), see also *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). In the instant case, Dr. Simpao's report was complete and the administrative law judge did not find that it lacked any credibility. We reject, therefore, claimant's contention that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. See *Hodges*, 18 BLR at 1-93.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge